

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 02-135

STEVEN G NEWMAN, Executor
under the Will of Michael
Green,

Plaintiff,

-vs-

GENERAL MOTORS CORPORATION,

Defendant.

_____/

VIDEOTAPED

DEPOSITION

OF

DAVID COULSON

1221 Brickell Avenue
22nd Floor
Miami, Florida
August 21, 2008
Scheduled for 10:00 a.m.
Commencing at 10:36 a.m. to 2:50 p.m.

APPEARANCES:

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ALSO PRESENT:

George Thomas, Videographer

- - -

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1 (The following proceedings were had.)

2 THE VIDEOGRAPHER: In the matter of Newman
3 versus General Motors, case number 02-135. This is
4 the videotaped deposition of David Coulson. This
5 deposition is being taken at the Law Offices of
6 Greenberg Traurig in Miami, Florida.

7 Today's date is August the 21st, 2008. The
8 time on the video monitor is 10:36 a.m.

9 Would counsel please state their appearances
10 for the record?

11 MR. DONOVAN: Good morning, Maurice J. Donovan
12 of the Law Offices of Benjamin M. Del Vento,
13 appearing on behalf of the plaintiff, Newman.

14 MR. VINES: Jim Vines of King & Spalding
15 appearing for defendant General Motors.

16 Thereupon,

17 DAVID COULSON
18 was called as a witness and, having been duly sworn, was
19 examined and testified as follows:

20 THE WITNESS: I do.

21 DIRECT EXAMINATION

22 BY MR. DONOVAN:

23 Q. Mr. Coulson, I want to thank you for being
24 here this morning. We are here, as you know, for the
25 purpose of taking your deposition. As an attorney, I am

1 sure you know what a deposition is. You have probably
2 been on the other side of the table from where you are
3 sitting. So, unless you need me to do so, I will
4 dispense with the normal preamble.

5 Is that okay with you?

6 A. That's okay.

7 Q. Okay. As you know, my name is Maurice
8 Donovan. We met at a proceeding earlier in the case.
9 We are here for the purpose of taking this deposition in
10 the Newman versus General Motors case because you were
11 an associate with Kirkland & Ellis way back in 1990,
12 1991 when some of the events that we are looking at
13 transpired. Is that true?

14 A. True.

15 Q. Let me just get some background for this
16 record. I know you testified in another hearing so it's
17 on there, but let's get it here.

18 You are presently a partner at Greenberg
19 Traurig in Miami, Florida, which is where we are now
20 taking the deposition. Correct?

21 A. I am a shareholder. The way our firm is
22 structured from a corporate perspective, we have
23 shareholders instead of partners.

24 MR. VINES: Can we go off the record?

25 (A recess was taken from 10:41 a.m. to

1 10:45 a.m.)

2 BY MR. DONOVAN:

3 Q. All right. You were explaining something of
4 the corporate status of Greenberg Traurig that you are a
5 shareholder and not a partner. I think that's okay. We
6 understand that.

7 Where were you before Greenberg Traurig?

8 A. Well, I was -- if you don't mind, could I just
9 narrate? After law school, I served as a law clerk for
10 Federal District Court Judge Stanley Marcus in the
11 Southern District of Florida, down here in Miami. I did
12 that for about one year, and then I went to Kirkland &
13 Ellis starting in September of 1989. I left Kirkland
14 either the end of August or early September of 1999.

15 Q. Okay.

16 A. I came to Greenberg Traurig as a shareholder
17 at that time, and then I left Greenberg Traurig and
18 became a partner in the firm of Morgan, Lewis and
19 Bockius in their Miami office, and I don't remember
20 exactly when that was. I think it was 2001. I then --
21 in about July 2001 and then in, approximately, April --
22 or it may have been -- no, that was 2002. In July 2002
23 I accepted an offer from Morgan Lewis to join them as a
24 partner and then I returned to Greenberg Traurig again
25 as a shareholder about eight months later around late

1 March or early April in 2003, if I have my years right.
2 Then I've been with Greenberg Traurig continuously since
3 then.

4 Q. So, the period of time which we're concerned
5 about is the period of time you were with Kirkland &
6 Ellis. So, that would have been September of 1989
7 through June of 1999.

8 A. I left Kirkland at the end of August of -- if
9 I remember right, it was the end of August of 1999.

10 Q. So, about ten years you were at Kirkland &
11 Ellis?

12 A. Yes.

13 Q. And when you first came into Kirkland & Ellis,
14 you came in as an associate?

15 A. Yes.

16 Q. Right after your clerkship with Judge Marcus?

17 A. Yes.

18 Q. And at that time is when you began working
19 with product liability cases?

20 A. Yes.

21 Q. Is that what you did for the ten years you
22 were there, basically defense of product liability
23 cases?

24 A. Defense of product liability cases was part of
25 my practice with Kirkland & Ellis. The percentage of

1 time devoted to that area varied year by year. Probably
2 some years it was between 10, 20 percent. Other years
3 it may have been 40 percent, maybe even 50 percent, but
4 I doubt that it was ever more than 50 percent of my
5 practice.

6 Q. And of the 50 percent which was defense of
7 product liability cases was General Motors one of the
8 clients which you did work for there?

9 A. Yes, and when you said 50 percent, there may
10 have been one year if I had, say, a major trial where it
11 may have been close to 50 percent, but I am pretty sure
12 that more than 50 percent every year was commercial
13 cases which are non product liability cases.

14 Q. Okay. Of the percentage which was product
15 liability, was the majority of that for defense of
16 General Motors cases?

17 A. Yes.

18 Q. Was it all of it or was there other defendants
19 also in that mixture?

20 A. I defended -- almost all my products liability
21 experience at Kirkland was in the defense of General
22 Motors. I may have worked on a case for Nissan. I just
23 have a vague memory of that, and I know I did a couple
24 of cases for a Pfizer subsidiary that involved
25 completely different products.

1 Q. Okay. You came on board in Kirkland & Ellis
2 in 1989. The Green complaint, Green versus General
3 Motors was filed 1988 so it was a new case or a
4 relatively new case at that point when you came to
5 Kirkland & Ellis. Is that one of the first cases you
6 started to work on when you got there?

7 A. Yes.

8 Q. When you got there in 1989, was that the only
9 case you were working on for a while or was that
10 intermixed with other cases?

11 A. It was intermixed with other cases. It was --
12 Green was never a high percentage of my time overall.

13 Q. Okay. So, were you called in for certain
14 specific projects on Green rather than some kind of
15 continuity with the case throughout. Would that be a
16 fair statement?

17 A. Probably the way to describe it would be I was
18 a young associate working under the supervision of Andy
19 Langan and I don't remember at that point whether Andy
20 Langan was a partner or a senior associate but I would
21 do whatever tasks he asked me to do. I don't recall
22 that -- I was probably the only young associate on the
23 case for a period of time and then they substituted
24 Barry Fields to take my place at a certain point in
25 time, which was before the first trial.

1 Q. So, by the time we call it Green One came
2 about, you were already not working on the case. Is
3 that ---

4 A. Yeah, I phased off of the Green case sometime
5 before the first trial.

6 Q. And did you come back to it at any point in
7 time after that or that was the end of your involvement
8 with Green?

9 A. After the first trial which resulted in, is it
10 a mistrial after a deadlocked jury, there was a motion
11 to recuse the trial judge. I think her name was Judge
12 Ferentz. I believe the trial judge denied the motion
13 and then General Motors appealed it. I worked on the
14 appellate brief, and then I don't recall having any
15 other involvement on Green at that point.

16 Q. Okay. You were not involved in the Green two
17 trial?

18 A. Correct, not at all.

19 Q. And you weren't involved in any document
20 production after the Green One case?

21 A. Correct.

22 Q. Now, if I understand what your involvement
23 with Green was is that you drafted some interrogatories,
24 you responded to some document requests and as you just
25 told us you were involved in that one motion. Does that

1 basically encompass what you did?

2 A. I did some other projects in the case. I
3 recall reviewing investigators' statements about
4 witnesses or potential witnesses in the case and perhaps
5 summarizing them. I recall helping John Hickey or I
6 think it was for John directly with respect to Arthur
7 Damask, who was your expert witness on liability. I
8 helped him, perhaps, for the deposition and possibly
9 even for a trial cross examination outline.

10 Q. Okay. Now, when you came to Kirkland and
11 started working on Green, I assume you had no real prior
12 experience in working on the defense of automotive crash
13 worthiness cases. Correct?

14 A. Yes. There was -- I was a law clerk for a
15 Federal judge and I recall we did have a products
16 liability case involving a car crash that actually went
17 to trial while I was a law clerk but I don't think --
18 no, the defendant was not the manufacturer.

19 Q. Your education in defending automobile
20 manufacturers and specifically General Motors came from
21 your on-the-job training at Kirkland?

22 A. Yes.

23 Q. Was there any training that you got
24 specifically from General Motors where you went there
25 for any kind of seminar or any kind of instruction on

1 their discovery, how they keep files, anything of that
2 nature?

3 A. No, I don't recall.

4 Q. Do you remember whether there was any type of
5 handbook which described how General Motors liked things
6 done in the defense of their case and specifically with
7 respect to discovery and production of documents?

8 A. I don't recall one.

9 Q. So, basically, whatever format was adopted for
10 handling that was that of Kirkland & Ellis?

11 A. I don't quite understand your question.

12 Q. Well, I mean, whatever, however you would go
13 about addressing discovery responses, Kirkland & Ellis
14 had a procedure for doing that which they explained to
15 you what to do and that's what you did?

16 A. I am not sure if it's Kirkland & Ellis had a
17 procedure. I was a young lawyer working with Andy
18 Langan and so I would take Andy Langan's guidance.

19 Q. So, if Mr. Langan was doing that in accordance
20 with whatever procedures he knew of ---

21 A. Whatever -- I'm not sure you call it
22 procedures, whatever his practices were.

23 Q. But you never saw any written protocols or any
24 template answers to interrogatories or anything which,
25 you know, you got a booklet or were instructed, here,

1 this is what we use to answer interrogatories?

2 A. No, nothing like that that I recall.

3 Q. Were the interrogatories that you were
4 involved in drafting in Green, they contained a lot, the
5 first set at least, contained a lot of objections. Were
6 you involved in that?

7 A. You're talking about the plaintiff's
8 interrogatories on General Motors?

9 Q. Yes, the plaintiffs on General Motors?

10 A. In terms of responding?

11 Q. Yes.

12 A. I was involved under Andy's supervision in
13 responding to interrogatories and document requests, as
14 I recall.

15 Q. Okay. There are a number of preamble which
16 look like kind of form objections, languages were used
17 over and over again. It's also seen in other
18 litigation, too. Where does that language come from, do
19 you know?

20 A. It comes typically from something that someone
21 has done before and it's used. Again, you may look at
22 another case you had. In the Green case, I am just
23 trying to remember whether the lab -- it seemed to me
24 there was a law firm before Kirkland & Ellis and they
25 may have started the drafts of responses and we may have

1 just simply carried over what they did. If not, we
2 would have looked to responses, you know, from another
3 case just to use as a guide.

4 Q. My understanding is that this Green case was
5 your only involvement with an F-Car. Is that correct?

6 A. Yes, I am pretty sure throughout my time with
7 Kirkland or with General Motors that's the only F-Car,
8 yes.

9 Q. Did you work on other General Motors roof
10 cases after Green?

11 A. Yes.

12 Q. But none of them were F-Car cases?

13 A. Correct.

14 Q. Were you aware of something which we've called
15 the F-Car Project Center?

16 A. I became aware of that term.

17 Q. Did you become aware of that during your
18 handling of the discovery aspect of Green back in the
19 early nineties?

20 A. Well, it would have been -- let's see, I
21 started in '89. It would not have been '89. I'd have
22 to be refreshed whether it was -- it was after -- the
23 first time I would have even heard that term would have
24 been after there was an order issued by the trial judge
25 after which I believe ---

1 Q. Just to give you a time, that was in August of
2 1990?

3 A. August '90, right. So, yeah, somewhere there
4 in August or September 1990 I would have heard of the
5 term F-Car Project Center.

6 Q. Okay. So, with respect to the -- that order
7 was to get more specific answers to interrogatories
8 which had previously been answered by General Motors and
9 served on plaintiff. Correct?

10 A. Yes.

11 Q. Okay. So, you had no -- were you involved in
12 drafting the first set of interrogatories and which
13 became the final set which was served before Judge
14 Ferentz's order in August of 1990?

15 A. By interrogatories you mean the answers to
16 interrogatories?

17 Q. Yes. Yes, I'm sorry.

18 A. You know, my time sheets reflect my
19 involvement, but I think I was involved in helping Andy.
20 You know, basically Andy would have given me guidance on
21 approaches and I may have helped with some language or I
22 may have revised them. I think I did have some
23 involvement, but I'd have to refresh by my time records
24 or if I looked at the timing of the responses.

25 Q. We can do that in a while.

1 So, when you were involved in the first
2 service of interrogatory answers before Judge Ferentz's
3 order in August of 1990 you had no awareness that there
4 was an F-Car Project Center File?

5 A. Yes.

6 Q. And you became aware of that after Judge
7 Ferentz entered her order and was requiring more
8 specific answers to many of the questions which she
9 considered to be unresponsive previously. Correct?

10 A. Yes.

11 Q. And how is it you came to learn that there was
12 such a thing as an F-Car Project Center?

13 A. I believe there was a meeting in Michigan
14 where Andy Langan was present but I was not. And I
15 believe after Mr. Langan came back from that meeting we
16 talked about revising the responses in response to the
17 judge's order and so it would have been either in that
18 first conversation or a conversation after that that I
19 would have learned of the term F-Car Project Center.

20 Q. And at that point in time what was your
21 understanding of what the F-Car Project Center was?

22 A. I didn't have much of an understanding. I
23 just -- it was some kind of -- there had been some kind
24 of engineering work that produced some documents about
25 the F-Car but I would have only -- I think I only had a

1 vague understanding of what it was.

2 Q. Okay. Did you come to have a more or less
3 vague understanding of what it was as time came to pass?

4 A. Not in the Green case. I mean, I -- later in
5 other cases or actually in one specific case I came to
6 learn of another project center for a different car.

7 Q. What kind of car was that?

8 A. It was -- the car involved in my case was
9 called the H-Car but it was a relative of the C-Car.
10 So, there was a C-Car Project Center.

11 Q. Okay. And based upon what you know about the
12 F-Car Project Center File and now what you know about
13 the H-Car Project, were they basically the same concept
14 in terms of what they were?

15 A. I don't know.

16 Q. You don't know. You had no ability to compare
17 in your own mind the two of whether one was the same as
18 the other?

19 A. I put no thought to it. I was just -- I was
20 defending General Motors in a case involving the H-Car.
21 There was a discovery request specifically for the
22 documentation from the C-Car or what was called the
23 C-Car Project Center dealing with specific topics and in
24 that case we produced those documents.

25 Q. So, okay. Based upon putting together what

1 you know about C-Car Project Center file and what you
2 learned about the F-Car Project Center, what are these
3 project center files?

4 A. I don't have a real good memory about it. It
5 was not anything that had a lot of focus in the case I
6 was involved in but I believe ---

7 Q. Which case, the Green case or the H-Car case?

8 A. The other case, the H-Car case. The H-Car,
9 there was not a lot of focus on it. I don't remember it
10 being noteworthy at all. It was a case that had a lot
11 of discovery. I believe it's -- there was a center -- I
12 am not sure if it's a physical place called a center. I
13 just know there was a group of engineers who worked on
14 the design and development of a vehicle or vehicle line
15 and whatever work product they produced and kept in the
16 ordinary course of business would be in those files.

17 Q. Okay. Have you ever seen the entire F-Car
18 Project Center File in any form, microfiche, hard copy,
19 just where someone said there it is, that's the F-Car
20 Project Center File?

21 A. No.

22 Q. Do you have any conception as to how many
23 documents are contained within the file?

24 A. No.

25 Q. Do you have any understanding as to where the

1 file is or files are maintained and it could be one or
2 more places?

3 A. No. I understood that at least a copy -- I am
4 not sure if it's the original file or a copy of the file
5 had been sent from Michigan to Florida to the Rumberger
6 Kirk firm.

7 Q. And it was your understanding that that was
8 the entire F-Car Project Center File?

9 A. I don't know if it was the entire F-Car
10 Project Center File or a portion of it. That I don't
11 know.

12 Q. Do you know if there were other files which
13 had information with respect to the design and
14 manufacture of the F-Car or other than the F-Car Project
15 Center File?

16 A. I believe so. There is design documents, for
17 example, which we produced in the Green case.

18 Q. When you say design documents, what do you
19 mean?

20 A. These drawings that show designs of different
21 aspects of the car.

22 Q. Is it your understanding that the F-Car
23 Project Center File did not contain design drawings or
24 blueprints?

25 A. I don't know whether it did one way or the

1 other.

2 Q. You were involved with two documents,
3 basically two document production requests, one in 1990
4 and one in 1991. Is that correct?

5 A. I don't know the numbers of them but there was
6 two periods of time when I was involved with responding
7 to either interrogatories or request for production or
8 both.

9 Q. Okay. And I guess at least from what I know
10 one was the review of CPIRs accident report information
11 documents. Is that your understanding?

12 A. I think there was -- yeah, I might not have
13 understood your question before but I remember being
14 involved in reviewing the collision, the Collision
15 Performance Injury Reports. I think that's what they're
16 called.

17 Q. That was -- were you involved in something
18 before that? Was that the second of your, you know,
19 major involvement in producing documents?

20 A. I mean, I was involved in the process of
21 assisting Mr. Langan and I may have assisted him in
22 other ways that may or may not be reflected on my time
23 sheets. I am not trying to give you trouble but maybe
24 you can rephrase the question.

25 Q. Yes. My understanding based upon reading your

1 testimony is that you spent one full day reviewing
2 documents in Detroit in the Fall of 1990.

3 A. Yes.

4 Q. And then at another point in time you spent
5 some time reviewing these CPRIS and maybe some project
6 center files with the help of Bob O'Hara after Judge
7 Ferentz's order came down in August of 1990?

8 MR. VINES: I'm sorry, Maurice, just for the
9 record, you are referring to the show cause hearing
10 transcript?

11 MR. DONOVAN: Yes, also known as the privilege
12 hearing.

13 A. I thought the day I spent in Detroit -- I
14 think it was Detroit or it may have been Warren,
15 Michigan. I know I spent a day at the General Motors
16 facility in Michigan. I believe the whole day was spent
17 reviewing CPIRs. Then I may have received other
18 documentation from General Motors that Mr. Langan or
19 Andy Langan asked me to look at. It seems to me there
20 was maybe some research materials or research literature
21 it seems like. And there may have been others I just
22 don't remember. Then the only F-Car Project Center
23 Files that I actually reviewed were ones that were sent
24 to Kirkland & Ellis by Bob Rudock from Rumberger Kirk.

25 With respect to what Bob O'Hara was reviewing,

1 I never -- I don't believe I saw what he reviewed. I
2 mean, he was hired to assist the attorneys and he did
3 reviews and I don't recall now whether his reviews
4 resulted in documents being produced or not but if he
5 did review he picked out documents that were responsive,
6 those may have been sent directly to General Motors and
7 then produced in the case.

8 Q. Was that the first time that you had been
9 involved with Bob O'Hara in handling production request?

10 A. Yes.

11 Q. What did you know about him?

12 A. I knew he was a retired engineer who spent a
13 lot of time with General Motors. I think he worked in
14 what had been called the Fisher Body Division of General
15 Motors.

16 Q. With respect to this F-Car Project Center,
17 other than it was some compilation of documents having
18 to do with design of the F-Car, is there anything else
19 you knew about that, you know, how it was maintained,
20 what format it was maintained in, who kept it, where it
21 came from, what its origins were, what it consisted of,
22 any information at all other than what you just told us?

23 A. I think it was a microfiche, but I am not sure
24 it was. My memory kind of tells me it was microfiche.

25 Q. Did you ever review the microfiche of what's

1 purported to be the Project Center File?

2 A. No.

3 Q. So, just going backwards now, the first full
4 day you spent in Detroit in the Fall of 1990, which is
5 when you were going through these CPIRs forms --

6 A. Right.

7 Q. -- were they hard copy documents?

8 A. Yes, I think they were. They were in boxes.

9 Q. Okay. How many boxes?

10 A. I don't remember.

11 Q. Do you have any clue as to how many documents
12 were encompassed, ten, a hundred, a thousand, a million?

13 A. More than -- not a million. More than -- my
14 guess is more than a hundred. I mean, it took me all
15 day.

16 Q. And you were going through these documents one
17 at a time?

18 A. Yes.

19 Q. Who provided you with the documents?

20 A. I don't remember whether it was -- is it Jerri
21 Dassie or Nancy Genova, Susan Rhodes. It was somebody
22 who was a Product Discovery Group coordinator, if I
23 remember the titles right.

24 Q. Was that the first time you had been
25 introduced to anybody over at General Motors who had

1 that title of project or Production Discovery Group or
2 whatever it was called?

3 A. Yeah, probably in person.

4 Q. You had dealt with them by phone?

5 A. Yes.

6 Q. Do you recall whether you were handling any
7 other General Motors cases in or around the same time?

8 A. Yes, I am sure I did.

9 Q. Okay. And you were also involved in document
10 production in those cases?

11 A. God, I am trying to remember the ones that
12 would have been, yes.

13 Q. All right. So, you had boxes of these
14 accident documents and what were they? What was your
15 understanding of what those documents were?

16 A. If I remember right, these were documents that
17 were generated by a General Motors subsidiary called
18 Motors Insurance Corporation or Motors Insurance
19 Company, and after an accident that they were, that the
20 insurance company became aware of and an investigator
21 would go to the scene and inspect the car -- I don't
22 remember if they inspected the accident scene or not,
23 they may have. And they would just gather information
24 about the collision and the performance.

25 Q. So, would it tell you what kind of car was

1 involved in the accident?

2 A. Yes. Yes.

3 Q. Would it tell you the date of the accident?

4 A. Yes.

5 Q. The location of the accident?

6 A. Yes.

7 Q. Would it tell you what parts of the vehicle
8 were damaged in the accident?

9 A. Yes.

10 Q. Would it tell you roughly how the accident
11 happened, who collided with who and what form?

12 A. Yes.

13 Q. What other information ---

14 A. I don't think -- I am not sure how much detail
15 we had on that but ---

16 Q. Rear-end collision, side impact collision,
17 something like that?

18 A. Right. Yeah, you could tell what kind of
19 collision. Yeah.

20 Q. Anything else other than the information ---

21 A. If I saw one, it would refresh my memory.

22 Q. Anything significant that stands out in your
23 mind?

24 A. No.

25 Q. Okay. Were all of the documents you were

1 reviewing all F-Cars?

2 A. Yes, I am pretty sure.

3 Q. So, these were all accidents having to do with
4 F-Cars?

5 A. Yes.

6 Q. And what was your purpose in reviewing those
7 documents?

8 A. To determine if any of them were, if any of
9 those CPIRs were responsive.

10 Q. Responsive to what?

11 A. To document requests in the case as ordered
12 by, as clarified by the judge's order.

13 Q. Well, the judge said between, I think it was
14 1982 and 1988 F-Cars. Is that what you're talking
15 about?

16 A. Yeah, there was some period of time, some
17 scope, '82 to '85, '82 to '86, something like that.

18 Q. And was there any particular component part of
19 the vehicle that you were looking for?

20 A. The roof or the attachments to the roof.

21 Q. Okay. At that point in time did you have an
22 understanding as to basically what the plaintiff was
23 claiming the defect was in the Camaro which Michael
24 Green was driving?

25 A. Well, there was a report or interrogatory

1 answer from Arthur Damask, where he had this theory that
2 Michael Green was injured by the glass plate of the
3 T-top hitting him on his head during the collision. So,
4 that was a theory. And there was also a theory about
5 the tires, maybe there was some kind of silicone or
6 other substance on the tire and when Michael Green took
7 the car, you know, from his employer and went speeding
8 around I guess the claim is that the car, the tire would
9 have been slicker than a normal tire. But I know that
10 claim dropped out of the case at some point, so I don't
11 remember if that was in the case or not or if that was
12 the kind of thing we were looking for was the situation
13 where the tire was too slick or something. I don't
14 remember -- I know that the tire claim fell out of the
15 case at some point. I just don't remember when.

16 Q. You are aware that the plaintiff was claiming
17 that there was some kind of a defect with the roof
18 structure which allowed it or caused it to come down
19 onto Michael's head and causing his injury?

20 A. Yeah, that was it.

21 Q. And were you aware that it was a side impact
22 or an angle side impact I guess more accurately?

23 A. Yeah, I knew that Green had -- he was like --
24 if I remember right, he was speeding through a
25 residential neighborhood and then he sort of fishtailed,

1 lost control of the car and fishtailed and there was an
2 oncoming school bus with handicapped children. But I
3 don't think it was a gigantic school bus. I think it
4 was one of the shorter school busses and I believe the
5 side of the Camaro perhaps more toward the rear struck
6 the left front corner of the school bus. And then after
7 that there were some witnesses who believed that the car
8 had rolled over, and I don't remember the accident
9 reconstruction whether there was, the accident
10 reconstruction said it actually rolled over, whether it
11 flipped, whether it spun. That part I don't remember.

12 Q. Okay. And by that point in time you had the
13 benefit of plaintiff's answers to interrogatories and at
14 least to your recall either a report or an interrogatory
15 question which set forth Dr. Damask's opinions as to
16 what the defects were. Correct?

17 A. Of what he was claiming the defects were.

18 Q. So, was it with that in mind that you were
19 going through these documents to see if there were any
20 similar accidents in any of these pieces of paper in the
21 boxes that you were looking for?

22 A. That would have been part of the analysis. In
23 this -- I believe I had a memo that set forth my
24 thinking and criteria that I was using.

25 Q. Okay. Can you recall what the criteria was

1 that you were looking for?

2 A. Not without looking at the memo.

3 Q. Would it have to do with -- you were looking
4 basically for roof and tires -- and I am going to forget
5 about the tires because that never materialized but you
6 were looking for accidents which had something to do
7 with the roof, I assume.

8 A. Yeah, if there was some kind of collision or
9 accident that involved the roof or the components of the
10 roof, that's something I would have given particular
11 attention to.

12 Q. Okay. Now, my understanding is you went
13 through all of these documents, no matter how many there
14 were, and however number of boxes there were and you
15 didn't find one document which had anything to do with
16 the roof which you thought was responsive to any of the
17 interrogatories or any of the questions which were asked
18 in the demand for production of documents. Is that
19 correct?

20 A. Correct.

21 Q. Was that because there were no accidents
22 involving roofs at all or there were some accidents
23 involving roofs?

24 A. If I had -- I dictated that memo which
25 reflected -- at the time I was doing the review, I had

1 notes on a note pad and probably a legal pad. I would
2 have taken notes as I went through and then when I got
3 back to the office I dictated a memo to reflect what my
4 thinking was. I would have been happy to have produced
5 documents. If I thought something was a close call, I
6 would have produced it, but at the end of the day I
7 thought none of them were responsive and therefore
8 nothing needed to be produced.

9 Q. Did anybody else review those documents other
10 than yourself to make a second opinion, so to speak, as
11 to whether any of those documents were responsive?

12 A. Not that I know of.

13 Q. So, this decision as to what was produced and
14 what was not produced ended solely upon your judgment?

15 MR. VINES: I'm sorry, Maurice, can we go off
16 the record for one second?

17 THE VIDEOGRAPHER: Off the video record.

18 (A recess was taken from 11:15 a.m. to
19 12:38 p.m.)

20 THE VIDEOGRAPHER: Back on the video record.

21 BY MR. DONOVAN:

22 Q. Mr. Coulson, when we took a little break we
23 were talking about your review of -- let's try that
24 again. Mr. Coulson, when we took our break we were
25 talking about your inspection of CPIRs, Collision

1 Performance and Injury Report documents for the F-Car
2 and you had made reference to a memo you had prepared at
3 that time reflecting your thoughts and reflecting what
4 you had done with respect to that investigation. It's
5 Privilege Document 169. It has Bates numbers but they
6 are so small. It's Bates number 91 in the privilege
7 hearing. I am going to show you that so you can take a
8 look at it.

9 A. Do you want me to read it?

10 Q. No. Well, have you read it before? Do you
11 need to do that right now?

12 A. The last time I saw it was when we had that
13 hearing. This may be an exhibit.

14 Q. Do you want to read the whole thing first, do
15 you want to just ---

16 A. What are your questions?

17 Q. First of all, you didn't seem to know how many
18 boxes of stuff there. It says four file boxes so I
19 assume that's an accurate representation of how much you
20 had reviewed?

21 A. Yes.

22 Q. Okay. It says, my search was limited to
23 documents which provided predictive analyses in quotes
24 and, quote, investigations or examinations, end of
25 quotes. How was that criteria determined or did you

1 determine it, did somebody else determine it?

2 A. Well, it's in quotes so it came out of either
3 document request, interrogatory or the Court's order.

4 Q. And that was -- did you pick that out for
5 something to search for or was that given to you as
6 something to search for?

7 A. It's possible that out of the -- this is
8 criteria that Andy Langan and I may have discussed
9 before I went to conduct the review.

10 Q. Okay. But your best recollection is you would
11 have gone to the discovery request documents either the
12 interrogatories or demand for production of documents
13 and either you in conjunction with Andy Langan or Andy
14 Langan by himself picked out this as the basis for the
15 search for these documents. Correct?

16 A. Yes, but we would have looked at the judge's
17 order as well.

18 Q. Okay. Do you recall at any time any
19 discussion of alternative design being utilized as a
20 criteria for searching for any documents just as the
21 words predictive analyses were, you know, quoted here
22 that alternative design was a specific focus?

23 A. Well, the CPIRs, that would have no ---

24 Q. I understand ---

25 A. CPIRs would not involve alternative designs.

1 Q. I understand that. I am asking you if at any
2 time in any of the document inspections that you recall
3 doing that was one of the search criteria which was
4 discussed?

5 A. Well, the topic of alternative designs would
6 have been discussed in the process of answering
7 interrogatories or document requests.

8 Q. Okay. Do you recall that being selected out
9 as terminology to conduct a search for, specifically?

10 A. You mean in terms of what I did with the CPIRs
11 or something else?

12 Q. In terms of your hearing it assigned to
13 anybody to do, in terms of it being something that had
14 to be done, should have been done, was done, anything
15 concerning discovery on this where someone said, you
16 know, alternative design is something we need to search
17 for?

18 A. Well, it was one of the -- if I remember
19 right, it was a document request or an interrogatory
20 that asked about alternative designs and we had an
21 answer that we had drafted.

22 Q. Okay. Do you recall that being discussed
23 specifically as predictive analyses was picked out as
24 two key words in this particular instance?

25 A. I am not understanding the connect or the

1 relationship you are trying to establish.

2 Q. Okay. Well, specifically, someone picked out
3 certain words from the interrogatories so as to define a
4 search of the CPIR documents. Correct?

5 A. Well, yeah, I think they were document
6 requests or interrogatories or both, and it may have
7 been as clarified by the judge's order -- I'd have to go
8 back and review the order -- that called for the
9 identification or production of documents that involved
10 predictive analyses or investigations or examinations.
11 I would have been told probably by Andy Langan that
12 CPIRs may possibly be responsive to those particular
13 requests. Therefore, we asked General Motors to get all
14 the CPIRs together for the '82 to '86 F-Cars and that's
15 why I went to Michigan to review them.

16 Q. I understand that, and I'm saying, did that
17 same process of picking out certain descriptive terms
18 from the discovery document requests, do you recall that
19 ever happening with respect to the words alternative
20 design being taken out of the interrogatories or demand
21 for production and a similar search of any documents
22 being conducted specifically by someone looking for
23 responses to those terms?

24 A. I don't know. It's possible that it was,
25 whether it was Bob O'Hara or Joe Rice or somebody else

1 but, you know, could have looked for documents for
2 alternative designs, but I don't recall myself having
3 reviewed documents where there was a specific criteria
4 of alternative designs.

5 Q. Okay. And do you recall discussing it with
6 respect to an assignment to anybody else to do?

7 A. It's possible. I don't remember.

8 Q. You don't remember one way or the other?

9 A. Right.

10 Q. Now, you went through all these four boxes of
11 documents and you determined that none were responsive
12 to that search criteria for predictive analyses and
13 investigation or examination that reflect any and all
14 hazard associated with the defects?

15 A. Correct.

16 Q. But from reading this, and correct me if I'm
17 wrong, there were documents which referred to damage to
18 the roof as a result of an accident. Correct?

19 A. Yes.

20 Q. Okay. And you decided for whatever reason is
21 set forth in this memo that they were not responsive and
22 would not be produced because they didn't identify
23 hazards associated with that accident. Is that a fair
24 reading of that?

25 A. Hold on. Let me read it first.

1 MR. VINES: I'm sorry, Maurice, what number
2 document is that?

3 MR. DONOVAN: It's -- Dave, if you look in the
4 lower right hand corner for the number on the
5 back ---

6 THE WITNESS: It's Bates number ---

7 MR. DONOVAN: No, there is a written pen
8 number on the back. I'm sorry, it's 169.

9 A. Oh, 169. I mean, the best way is to read
10 this. Let's see, the descriptive comments regarding
11 damages were not an attempt to reflect hazards nor were
12 they related to roof or tire defects. The mere fact
13 that damage to the roof occurred cannot constitute facts
14 related to roof defects unless some commentary or other
15 information points to something being wrong with the
16 roof. Now, that doesn't mean that the person had to
17 write that, whoever filled this out, the investigator
18 had to write down there is something wrong with the
19 roof. It means, I'm reviewing these and could someone
20 infer that something might be wrong with the roof based
21 on what I am seeing there, that's the criteria that I
22 would have used.

23 Q. Okay. So, there were documents among there,
24 there were these CPIRs where roof damage was circled as
25 part and parcel of the happening of the accident.

1 Correct?

2 A. I believe there were.

3 Q. And you made a judgment that those would not
4 be produced to the plaintiff because they didn't meet
5 the criteria of identifying hazards or roof defects
6 because there wasn't anything specifically on that form
7 which said that the damage was as a result of a defect
8 or the damage was as a result of a hazard or ---

9 A. Well, it wouldn't have to be defects. It
10 would be like claimed defects or where someone might
11 assert a defect. My memory of this is that where the
12 roof, where there was some indication of damages to the
13 roof it was because of just sort of incidental damage.
14 It was not a situation -- they were not ones where the
15 roof was, you know, any kind of significant component of
16 the accident.

17 For example, if you crash a car into a tree at
18 a pretty decent rate of speed, there is going to be a
19 little bit of damage to the roof. I mean, if you take
20 the car to the body shop, they're going to have to --
21 there might be -- you know, the A pillar might be
22 damaged a little bit, for example. So, there may be
23 some body work done to it but, Jesus, a frontal
24 collision it's like nothing that's possibly like the
25 Green accident or even close to it where you could have

1 any kind of theory that was being asserted by the
2 plaintiffs.

3 Q. Okay. Would you have pulled from those
4 documents where there was circled roof damage and it was
5 a side impact?

6 A. Yeah, I think if it was -- I believe if there
7 was any kind of accident that was like close to Green's
8 accident where either the car is hit, hit something on
9 the side or is hit by another vehicle or something else
10 and there was damage to the roof, yeah, that's something
11 that I probably would have picked out.

12 Q. So, what you're saying is among these
13 documents there were no side impact collisions where
14 there was damage to the roof because you would have
15 picked them?

16 A. I don't remember.

17 Q. Okay. Well, you didn't pick any documents.
18 Correct?

19 A. Correct. I remember thinking I would like to
20 produce documents out of this. I have spent the whole
21 day here. I have gone through four boxes, and in my
22 judgment none were responsive. And that's why I
23 dictated this memo as -- because I had a lot of notes as
24 I went through the day. And if I recall, I put like a
25 Post-it on or something saying, okay, I am going to go

1 back to that report later after I see more and more of
2 these things. And at the end of the day, I determined
3 nothing was responsive. And I thought, well, geeze, if
4 anyone asked me like, Coulson, why didn't you produce
5 any of those documents, I wanted to reflect what my
6 thinking was. And my thinking at the time is reflected
7 in this October 11, 1990 memo.

8 Q. Were there any rollover collisions on any of
9 the documents you reviewed?

10 A. I don't think there were.

11 Q. If there were rollovers and there was damage
12 to the roof, would you have pulled that document as one
13 that was responsive?

14 A. I probably would have but we are speculating.

15 Q. But it would have -- but right now if you were
16 given those documents you would consider that to be
17 among the criteria identified in your search?

18 A. Most likely because someone, if there is a
19 roll -- I have done a lot of rollover roof crush cases
20 and the plaintiff's lawyer may claim that there is some
21 defect in the roof.

22 Q. So from ---

23 A. Can I just finish the rest for a second?

24 Q. Sure.

25 Okay. So, just in some, there were probably

1 documents there that had roof damage circled but you did
2 not produce them because it was either insignificant or
3 didn't meet this criteria you had established. Correct?

4 A. Right.

5 Q. And you don't believe there were rollover
6 documents because you probably would have pulled them if
7 they were. Correct?

8 A. Right.

9 Q. And you would have pulled any documents which
10 were side impacts which they were roof damage?

11 A. Yeah, it would depend. I mean, it would be
12 side impacts similar to Green's accident. It's possible
13 if it was side impact let's say the front -- I'm
14 forgetting my vehicle terminology now but is that the
15 fender out front? And also something like in the engine
16 compartment kind of thing, well, that's not even close
17 to the Green situation.

18 Q. So you would have weeded that out?

19 A. I would have probably thought, well, that kind
20 of side impact has nothing to do with the Green
21 accident, but we are kind of speculating here because I
22 would have to go back and review the documents. But I
23 did this memo to try to reflect my thinking.

24 Q. And after spending a whole day reviewing all
25 of these documents, that was the last time you were

1 involved in going through the CPIRs documents?

2 A. That I recall.

3 Q. And, again, I think I may have asked this but
4 I am forgetting. No one else then reviewed them again
5 to, you know, see if your judgment was correct in
6 analyzing it?

7 A. To my knowledge, no one went back through
8 those four boxes. I am just thinking it's possible that
9 -- you'd have to look at my billing records, but maybe
10 some additional CPIRs came in that I was asked to review
11 later but that would not have involved a trip to
12 Michigan.

13 Q. And you didn't pull any documents out of that
14 which you were concerned might meet the criteria to ask
15 anybody else's opinion?

16 A. Correct.

17 Q. My understanding of -- strike that. Somewhere
18 in your other testimony you talk about reviewing an
19 index of documents to make a determination as to what to
20 produce and not to produce. Do you recall that?

21 A. What I said earlier today?

22 Q. No, in your earlier testimony, I'm sorry, at
23 the privilege hearing.

24 A. Yeah, it seems to me I did mention something
25 about this earlier this morning, maybe not, but it seems

1 to me there was an index relating to maybe research
2 materials or research articles or some kind of technical
3 literature and I tend to think it was in the Green case
4 that I reviewed that and based on whatever title or
5 abstract was provided I may have made judgments whether
6 something was responsive or not.

7 Q. Okay. Your best recollection is those were
8 not technical documents. Those were more papers or
9 publications?

10 A. Well, they would have -- well, they all would
11 have been technical issues about automotive.

12 Q. I mean, they weren't design documents or
13 blueprints or, you know, test documents? That's what
14 I'm talking about when I say technical documents.

15 A. Right. Exactly.

16 Q. And then at some point after that somewhere in
17 1991 you say you recall reviewing documents which had
18 come from the Rumberger office. Correct?

19 A. Yes.

20 Q. Were you aware before that that Rumberger's
21 office was reviewing documents for the Green case?

22 A. Yes.

23 Q. You were. How did you get that knowledge?
24 Where did that come from?

25 A. After Mr. Langan or Andy Langan returned from

1 Michigan, I believe he told me that there were some
2 documents on microfiche, I thought he said it was
3 microfiche that another law firm would be reviewing
4 for -- that -- my memory was there was already a project
5 under way with another law firm and it made more sense
6 from the efficiency standpoint to have that law firm do
7 the search for the Green case as well and that firm
8 would handle it and that was how it was going to be
9 handled.

10 Q. Do you know whether that firm was ever
11 provided with the discovery request themselves, the
12 interrogatories and the demand for production of
13 documents?

14 A. I don't believe I provided that firm with
15 them. My memory was I had no communication with that
16 firm about the Green case --

17 Q. That was my next question.

18 A. -- until we get into July of 1991.

19 Q. Okay. Well, that's what we're talking about,
20 sometime in July of 1991. Did you have communications
21 with them directly about these documents then?

22 A. I think it was July. Maybe it was August of
23 1991. It was in the summer sometime of 1991 Andy Langan
24 told me that Kirkland, I think it was Ron Betman
25 perhaps, who was another associate at Kirkland -- he did

1 not work on the Green case. He worked on a different
2 case -- that he had received a batch of documents from
3 the Rumberger firm and that he wanted me to review them.
4 So, he had a copy made for me and I reviewed them.

5 Q. Okay. So, it's your understanding that these
6 were documents that had been produced for another
7 associate in the office on another case and you were
8 being asked to review them for the Green case?

9 A. I am not sure about produce. I mean, they
10 were copies made available or sent to Ron Betman for
11 Kirkland.

12 Q. Do you know what the scope of the documents
13 the Florida firm, the Rumberger firm was reviewing out
14 of which the selected documents came?

15 A. I am not sure I understand your question.

16 Q. You received from Mr. Betman a series of
17 documents which had been culled from, I assume, a larger
18 selection of documents?

19 A. Yes, that was my understanding.

20 Q. Do you know what the larger selection of
21 documents was from which those documents were culled?

22 A. I thought it was the F-Car Project Center
23 File.

24 Q. Do you know if it was the whole F-Car Project
25 Center File, every document contained in it?

1 A. I did not have such knowledge but my
2 understanding was that the F-Car Project Center Files,
3 being all of them, were sent to the Rumberger firm by
4 General Motors for its review.

5 Q. Okay. And that was in conjunction with just a
6 review of those files or was it in conjunction with
7 another case, if you know?

8 A. Well, I believe there was a need to review
9 them because of another case and since that firm was
10 undertaking that effort, the thought was -- it wasn't my
11 thought, it was decided in that meeting, I believe in
12 Michigan, that the Rumberger firm would review these
13 documents for the Green case, as well.

14 Q. All right. Do you know what, if anything, the
15 Rumberger firm was provided by way of document requests
16 from the Green case in order to conduct such a search?

17 A. I did not provide anything or any
18 documentation to the Rumberger firm.

19 Q. Okay.

20 A. It's my understanding that General Motors was
21 going to.

22 Q. Okay. But you don't know that one way or the
23 other?

24 A. No.

25 Q. Did you ever have any conversations with

1 anybody from the Rumberger firm specifically about Green
2 and what the discovery criteria were?

3 A. No, not until -- I did not in 1990 but around
4 July or August 1991 I had discussions with somebody from
5 Rumberger.

6 Q. Do you remember who?

7 A. I put in a call to Bob Rudock --

8 Q. Okay.

9 A. -- and I received a call back from Henry
10 Salas.

11 Q. Okay. What was the nature of that call?

12 A. He was returning my call and I told him why I
13 was calling.

14 Q. Why was that?

15 A. I told him that we had received these
16 documents. I'm pretty sure I read him the letter that
17 Mr. Rudock had sent up to Ron Betman. I then asked him
18 about what the scope of the review was that was
19 conducted by the Rumberger firm.

20 Q. Okay. What did he tell you?

21 A. I wanted to get confirmation, one way or the
22 other, whether the scope of the review was broad enough
23 to encompass what I thought would be adequate to
24 encompass the responsive documents for the Green case.

25 Q. Now, in your mind were you working with any

1 specific questions or specific design criteria or
2 language or is it your understanding that these
3 documents would be responsive to any of the questions or
4 any of the demands to produce in Green?

5 A. Yeah, I was broader. It was -- I was not
6 specific -- if I recall, I looked at the judge's order
7 in the case and -- which I have to -- I'd like to -- I'd
8 prefer to get my memory refreshed by looking at -- I
9 think there are some documents, maybe a letter I sent to
10 Joe Murray, maybe my time sheets. I think there are
11 some documents. I just remember seeing -- when we were
12 up in New Jersey for the hearing I remember seeing some
13 documents that refresh my memory on the scope, but in
14 general I wanted to find out if all the documents
15 pertaining to the roof or the sort of the component
16 parts of the roof was, constituted the scope of the
17 review and that would include the T-roofs.

18 Q. Did Mr. Salas indicate to you that he had a
19 copy of the Green discovery request that he was working
20 off of?

21 A. No, I don't think we talked about that. I
22 wanted to know -- I believe he told me that a paralegal
23 reviewed it and I asked if he had confidence in the
24 paralegal, which he said he did. And I asked him what
25 the sort of, if the scope or criteria was broad enough

1 to encompass what I thought would encompass the
2 documents that would be responsive in Green and he
3 confirmed that it did. The reason I called was to get
4 that confirmation because if not then either the
5 Rumberger firm had to do another search or myself or
6 someone else would, from Kirkland & Ellis, needed to go
7 down there and review the documents.

8 Q. But -- and maybe I am just confused here --
9 how would Mr. Salas know what would fully encompass a
10 search to provide responsive documents in Green unless
11 he knew what those discovery requests were?

12 A. Because if all the documents relating to the
13 roof or, you know, the components of the roof were
14 gathered then that necessarily will include the
15 documents that would be responsive for Green.

16 Q. So, your understanding was that this search
17 which was conducted by Rumberger's firm and produced to
18 you were all the documents having anything to do with
19 the roof or any of the component parts which were
20 contained anywhere within the F-Car Project Center File?

21 A. Component parts to the roof, yes.

22 Q. And were attacked, like the A pillars ---

23 A. Right the A pillars, the header, etcetera.

24 Q. Right. And that that would be both with
25 respect to the hard roof and with respect to T-roofs?

1 A. Yes.

2 Q. All right.

3 A. You have to keep in mind, my understanding was
4 that Rumberger had reviewed these documents for a roof
5 crush case. So, in reviewing documents for a roof crush
6 case, you are going to, you know, pick out the documents
7 relating to the roof and the component parts of the
8 roof.

9 Q. Was there any specific discussion about
10 whether documents were pulled which reflected
11 alternative designs for the T-roof?

12 A. I may have asked about that.

13 Q. Okay. Do you recall doing that?

14 A. Not specifically. I'd need to look back at
15 the judge's order, which I know was something that I
16 referenced and had in hand when I talked to Mr. Salas.

17 MR. DONOVAN: Mark this as Coulson 1.

18 (Plaintiff's Exhibit No. 1, Order, was marked
19 for identification.)

20 BY MR. DONOVAN:

21 Q. Mr. Coulson, I am going to show you what was
22 just marked as Coulson 1, which I believe is the order
23 you keep referring to as needing to look at to refresh
24 your recollection as to whether you might have
25 specifically discussed alternative design or not.

1 A. Yeah, I remember this language, "Documentation
2 relating to the roof system/structure and any connected
3 or related parts including the left rear portion of the
4 '82 through '86 model years Camaro manufactured with a
5 T-roof," and so that's what I would have -- in terms of
6 the questioning I had with Mr. Salas I for sure was
7 referencing this order. Now, I may have also looked
8 back at document request or interrogatories before I
9 spoke with him, but, certainly, if there is any
10 documents dealing with the roof and if the question is,
11 if there is some alternative design to the roof, that's
12 the document that relates to the roof. So, I would have
13 assumed that any alternative design documents would have
14 been sent, would have been what was included.

15 Q. That's an assumption which you are making or
16 you have a recollection of having that kind of
17 discussion with respect to alternative design with
18 Mr. Salas?

19 A. I may have asked him specifically about
20 alternative designs but through the logic of my thinking
21 it was sort of like, did you pull out -- out of the
22 containers did you pull out all the vegetables and if
23 we're concerned with broccoli, well broccoli is a
24 vegetable, and if he told me, yes, we pulled out all
25 vegetables then, you know, broccoli should have come

1 along with it, just to give you an analogy.

2 Q. Okay. I am going to show you a document which
3 was Document 46 -- I think that may be my numbering of
4 something. It's interrogatory number 68 from ---

5 MR. VINES: Just for the record, you think
6 it's Document 46 from the hearing?

7 MR. FIXEL: I don't believe that it was
8 marked.

9 MR. DONOVAN: We used this.

10 MR. VINES: You are making it an exhibit now?

11 MR. DONOVAN: It's part of the motion to
12 supplement. It's the questions which we believe
13 were not answered appropriately. That's what it
14 is. It was interrogatory number 68.

15 BY MR. DONOVAN:

16 Q. Do you recall seeing number 68 from the set of
17 interrogatories served upon General Motors in the Green
18 case?

19 A. Right.

20 Q. Do you recall specifically any discussion or
21 any work being done to respond to that question dealing
22 with alternative design number 68?

23 A. You mean in my discussion I had with Henry
24 Salas from the Rumberger firm?

25 Q. Discussion at any time in any discovery

1 meetings with Mr. Langan where you specifically sat down
2 and said, now let's sit down and deal with this
3 alternative design issue?

4 A. Well, I remember we did specifically discuss
5 how to answer interrogatory number 68 and we had some --
6 an answer. I am trying to -- thinking back, I am not
7 sure if there was a convertible F-Car or not. There was
8 certainly a hard, a regular hardtop F-Car. I mean, that
9 was -- I think the majority of F-Cars sold I'm assuming
10 probably had the hard top so that's -- I suppose you can
11 call that an alternative. And I don't remember if our
12 response referenced it or not, but I remember we
13 definitely had discussions about answering interrogatory
14 number 68 as we did about all the interrogatories.

15 Q. Okay. Do you recall back then being aware of
16 other alternative designs such as a design called a
17 Vista Vent or a modified Vista Vent?

18 A. No.

19 Q. Do you recall that language even up until
20 today?

21 A. I don't -- the first time I heard of that
22 language was when we were up in New Jersey or -- you
23 know, I take that back. I think Jim Feeney, who was the
24 trial attorney for General Motors earlier in this Newman
25 case had told me about those terms. That's, I think,

1 the first time I ever heard of them.

2 Q. So, nowhere during your handling of the Green
3 case when you were at Kirkland & Ellis did the terms
4 Vista Vent or modified Vista Vent come up?

5 A. I don't recall it at all.

6 Q. Okay. Do you recall ever discussing at any
7 point in time while you were at Kirkland & Ellis dealing
8 with the Green case, any kind of design or testing or
9 studies which were done on a Lancia Spider?

10 A. No.

11 Q. Were you aware now that there was some testing
12 done on a Lancia Spider by General Motors way back when?

13 A. I am not sure if that's part of the documents
14 that I would have looked at for that hearing at New
15 Jersey or not. It sort of rings a bell, but I'm not
16 familiar with the Lancia Spider.

17 MR. VINES: Let me just make a quick
18 objection. I am not sure in this deposition we
19 have evidence in the file that General Motors did
20 testing on a Lancia Spider.

21 BY MR. DONOVAN:

22 Q. So that would have been -- if it was true,
23 that was something you learned as a result of this case,
24 not something that you knew previously?

25 A. Correct, this case being this Newman matter

1 that's in Federal court.

2 Q. Right.

3 A. I have never heard of the car make Alancia
4 except for a Fiat Spider, but I have never heard of an
5 Alancia Spider in just every day life.

6 Is Fiat still in business?

7 MR. VINES: I don't know. I haven't seen a
8 Fiat in a long time.

9 BY MR. DONOVAN:

10 Q. I am going to show you a document which comes
11 from the privilege hearing. It's number is 143 and also
12 another document which is 119.

13 MR. VINES: These are document numbers from
14 the show cause hearing?

15 MR. DONOVAN: Let's start again because I took
16 out more than I want to. I actually only want this
17 document, Privilege Hearing 19, which starts with a
18 document cover sheet from Kirkland & Ellis. Let me
19 ask you to take a look at that, please.

20 MR. VINES: I'm sorry, before you get into
21 that, do you mind describing what that document is?

22 BY MR. DONOVAN:

23 Q. It's a cover sheet and then there is draft
24 answers to interrogatories.

25 A. Okay.

1 Q. There is a lot of handwriting on that draft
2 copy. Do you know whose handwriting that is or if you
3 don't I guess I can ask, is it your handwriting, number
4 one?

5 A. It does not look like mine. I am guessing
6 it's Andy Langan's but that's a pure guess.

7 Q. Is that typically how interrogatories would be
8 answered? There would be a draft and then they were
9 circulated among the various attorneys who were involved
10 in the case and they would cross out things and write in
11 things and change them and then pass them along to
12 someone else to review and that may go through a bunch
13 of cycles of drafts and redrafts?

14 A. In a very broad sense that process would
15 happen sometimes but, typically, within Kirkland &
16 Ellis, I would -- between Andy and I, we would draft
17 answers and once we were comfortable with them or
18 thought we were pretty far along, then we may solicit
19 New Jersey counsel, for example, in this case, a Mr. Joe
20 Murray or Tom Tansey and get their input and then at
21 some point we would send it to the client for the
22 client's input.

23 Q. Who over at the client would you send it to,
24 attorneys or engineers?

25 A. It could be all three. It could be -- it

1 definitely would include the attorney, the Product
2 Discovery Group coordinator, typically, and sometimes
3 the engineer such as -- in this case it was Joe Rice so
4 it's possible. But when you get to that point the
5 interrogatories are usually or the answers are pretty
6 far along and we always want the client's input before
7 we finish.

8 Q. And after the client has his input then it
9 would come back to Kirkland & Ellis for it to be typed
10 in final form?

11 A. Or revised. I don't remember whether we were
12 using typewriters then or personal computers. My memory
13 of when the computers came in is a little fuzzy.

14 Q. Then the final copy would be sent to local
15 counsel to serve on to plaintiff's counsel?

16 A. In this case, that's the best of my memory how
17 we did it.

18 MR. VINES: Maurice, sorry to interrupt, just
19 to clean the record up, the document we just
20 finished looking at appears to be Privilege Hearing
21 Document 119.

22 MR. DONOVAN: Right, 119. Isn't that what I
23 said?

24 MR. VINES: I thought you said 19.

25 MR. DONOVAN: Sorry, 119.

1 BY MR. DONOVAN:

2 Q. We had some discussion about, you know, the
3 various law firms involved in the Green case and other
4 General Motors defense cases and we certainly all know
5 what local counsel is. That's the counsel who appears
6 in whatever state or locality the action is filed in and
7 some, I don't know if it's dual states -- I know New
8 Jersey requires local counsel or they have pro hoc vice
9 counsel come in and that was Tansey's firm with Joe
10 Murray. What was Kirkland & Ellis' role in the Green
11 case?

12 A. It was to defend the company working with New
13 Jersey counsel.

14 Q. Okay. Were they a specialty firm or were they
15 regional counsel? Were they national counsel? Why were
16 they brought in? Why wasn't it just left to Tansey's
17 firm to defend?

18 A. I am not sure what you mean by -- I think you
19 said a specialty firm.

20 Q. Someone else used that terminology. It's not
21 mine. It was defined as a firm who has handled a lot of
22 the specific kind of case like the Rumberger firm was
23 known to be the specialty firm in roof cases and there
24 were other firms which had specialties in fire cases.

25 A. You have kind of like in the medical field the

1 world specialty is used but not so much in the legal
2 field. Well, let's put it this way, John Hickey from
3 Kirkland & Ellis is a phenomenal trial lawyer and back
4 then he represented General Motors in a lot of rollover
5 roof crush cases and that -- I'm just speculating, that
6 may have been a reason why Kirkland & Ellis was asked to
7 be involved in the defense of the Green case because at
8 least there is a roof related theory by the plaintiffs,
9 although this is not a classical roof crush case. So,
10 that's very possible as to why Kirkland & Ellis was
11 asked to take part in the defense.

12 Q. Now, is it typical, based upon your experience
13 in dealing with these cases, that there would also be
14 another outside firm such as Rumberger who would be used
15 simply to review documents or is that an anomaly?

16 A. No, that happened relatively frequently on
17 cases that were more involved with document productions.

18 Q. That there would be three different firms
19 handling them?

20 A. There could be more than that.

21 Q. In the case -- in those cases, are those firms
22 disclosed of record or do they work behind the scenes?

23 A. No, they're working to assist the counsel that
24 are on the record appearing in the case.

25 Q. Okay. And they can either be identified or

1 not identified?

2 A. Right.

3 Q. So, you wouldn't consider it unusual that the
4 Rumberger firm was not known to the plaintiff until this
5 litigation was commenced?

6 A. No, not unusual at all. It's not just General
7 Motors. I represent a lot of -- over the years I
8 represent a lot of corporations and that's not unusual
9 because for efficiency sake if you have attorneys who
10 have reviewed documents and they're familiar with them
11 you don't want to have another firm reinvent the wheel.
12 It's costly.

13 Q. Doesn't it make it a little more complicated
14 to handle these litigation, having all these different
15 hands in the pot? You know, the old expression, too
16 many chefs boil broth, that doesn't apply here?

17 A. No. No, it's pretty common that we work as a
18 team and just because you have one other firm it just
19 means that instead of your firm doing it somebody else
20 is doing it and the whole, everyone's goal is to
21 represent their client, General Motors. So, typically
22 there is a good amount of collegiality among the firms
23 and it works to the benefit of efficiency.

24 Q. I am going to show you a document which was
25 marked 218 at the privilege hearing. It's a memo. It

1 starts as a memo from Andy Langan to you, July 24th,
2 1991 and it refers to the F-Car center documents which
3 were sent to Ron Betman by Robert Rudock. I think you
4 might have mentioned that.

5 A. Right.

6 MR. DONOVAN: I'm sorry, what number did I say
7 that was?

8 MR. FIXEL: 218.

9 BY MR. DONOVAN:

10 Q. Is that the totality -- next to that memo, is
11 that the totality of the documents which were reviewed
12 and culled by the Rumberger firm and sent to Kirkland &
13 Ellis after their review of the F-Car Project Center
14 File?

15 A. I would have to see what was sent to me for my
16 review. Looking at this, my inference is no because I
17 state in this July 24th, 1991, memo to Andy -- at the
18 end I state, "The attached documents are possibly
19 responsive and merit closer review. So, my inference is
20 that these documents which were attached to this memo
21 are a subset of what I reviewed."

22 Q. Okay. So, Rumberger has the big set of
23 documents. You review a subset of those documents and
24 these documents represent the subset of the subset?

25 A. Right. This is the subset that I believe are

1 possibly responsive and merit further review, which is a
2 way of asking Andy for his input on it.

3 Q. Okay. So, all of the documents which
4 Rumberger sent to Kirkland & Ellis after their review
5 were not considered for submission to the plaintiff?

6 A. No, I think that Andy and I discussed these
7 documents, and after discussing it we both agreed that
8 we are going to -- we decided to produce to the
9 plaintiffs all the documents we got from the Rumberger
10 firm.

11 Q. Okay.

12 A. That's my memory but I have to look at the
13 documents.

14 Q. So, you think it was more documents than that
15 which was actually produced?

16 A. I'd have to go back and look at the documents.
17 Do you have a memo to me which attaches the documents
18 received from Rumberger?

19 Q. No.

20 A. What about is there a letter from -- what
21 about the letter from Rudock to Betman, does that have
22 attach to it documents?

23 Q. No, but I do have, which might be helpful,
24 Privilege Hearing Document 219, which is a July 29th,
25 1991, letter from you to Nancy Genova telling her that

1 these documents we want Bates stamped and appropriately
2 privileged marked for submission to the plaintiff.

3 A. I need to do a document by document review,
4 but it certainly seems that there are more pages in this
5 July 29th, 1991, letter attachment than there are in the
6 memo. I mean, you can just like compare. This is a
7 thick -- this is a thicker document than this, I'm
8 guessing. This consists of the documents we received
9 from Rudock.

10 MR. VINES: I'm sorry, just to make the record
11 cleaner, can we refer to that document as 219 and
12 that one as 218?

13 A. Yeah, 219 is thicker than 218 and appears to
14 include more additional documents than what are attached
15 to my July 24th, '91 memo, which was 218.

16 BY MR. DONOVAN:

17 Q. Okay. And I would concede that that one is a
18 larger package than the other. So, your recollection is
19 that the 219 documents, which is a larger set of
20 documents, was the totality of the documents which
21 Rumberger sent to Betman after his review of the F-Car
22 Project Center File for roof-related documents?

23 A. Right, that's my memory is that we decided to
24 produce everything we received from Rumberger.

25 Q. So, you not only produced the documents which

1 are in the memo to you, which is document --

2 MR. FIXEL: 218.

3 A. 218.

4 Q. -- 218, but you went back and pulled the rest
5 of the Rumberger documents and submitted them also?

6 A. Yes.

7 MR. VINES: I'm sorry, Maurice, 218 is from
8 Mr. Coulson to Mr. Langan. You said it was to him
9 but from him.

10 BY MR. DONOVAN:

11 Q. You are right. The documents which you got
12 from Mr. Langan, which were potentially responsive, were
13 increased to the full, which was a subset to the
14 Rumberger documents to Mr. Betman ---

15 A. I'm a little confused. I guess the bottom
16 line is that my memory is that Andy and I decided to
17 produce to the plaintiffs --

18 Q. Right.

19 A. -- all documents we received from the
20 Rumberger firm in, approximately, July of 1991.

21 Q. Okay. Let me just see if I can make that more
22 confusing. There was the F-Car Project Center File
23 which Rumberger reviewed?

24 A. Correct.

25 Q. Then there is the subset of documents which

1 Rumberger said these are the roof-related documents
2 which he sent to Betman?

3 A. Right.

4 Q. Then Betman gave those documents to Andy
5 Langan. He created another subset of those documents,
6 which is the 218 document, which he gave to you for
7 review to see if they were responsive?

8 A. No. No. No. Andy gave me everything that
9 Rudock had sent to Betman.

10 Q. Okay. With that first memo?

11 A. The first memo was from me to Andy Langan
12 after I had reviewed the documents we received from
13 Rumberger.

14 Q. I'm sorry. I'm sorry. I don't have it in
15 front of me. So, you created a subset of the Rumberger
16 documents which is 218 --

17 A. Right.

18 Q. -- which you gave to Andy Langan?

19 A. Right.

20 Q. Okay. And you said these are the documents I
21 think are responsive to plaintiff's demand to produce
22 and interrogatory questions?

23 A. Right.

24 Q. Okay. And that was a lesser number of
25 documents than the Rumberger set of documents which they

1 had pulled?

2 A. Right.

3 Q. So you had taken documents that Rumberger sent
4 related to the roofs and pulled out documents and said
5 no, these are not responsive?

6 A. Right.

7 Q. And then, after discussing them with Andy
8 Langan you put those documents back in so we were back
9 to the Rumberger subset of documents from the F-Car
10 Project Center File?

11 A. Right.

12 Q. And that's what plaintiff eventually got?

13 A. Right.

14 Q. Okay. Why did you decide to pull certain
15 documents out of there only to then go back and decide
16 to submit them? What was your rationale for pulling the
17 documents out?

18 A. Well, I reviewed all the documents to
19 determine which, if any, were responsive to document
20 requests or interrogatories as clarified by the judge's
21 order. The ones I attached to this memo to Andy were
22 the ones I thought were and I sent it to him so he can
23 review them. And then we discussed them and in the
24 discussions, I'm not sure if it was myself who
25 recommended that we produce everything or Andy suggested

1 it but we were in a consensus with it.

2 Q. Okay. But your first view of what was
3 responsive was more restrictive than your later view
4 after discussing it with Mr. Langan?

5 A. No, I think we sent you some nonresponsive
6 documents. We said, look, let's just send all of them.
7 I did not change my mind as to whether something was
8 responsive or not. We just said, look, let's just send
9 all of them.

10 Q. Do you know the terminology we have been
11 using, the A through H documents, do you know what I am
12 referring to?

13 A. I think so, based on the hearing we had up in
14 New Jersey.

15 Q. Just so we are on the same page, I used these
16 yesterday, the A through H documents were addendums to a
17 motion filed to supplement the record before the
18 Appellate Division in New Jersey in the Green versus
19 General Motors cases, which were documents which came to
20 our attention after the trial. And they were actually
21 addendum A through H, and that's how they became known.

22 This is the motion which was filed which has
23 the original addendum A through H documents exactly as
24 they were submitted to the Appellate Division to review.
25 So, why don't you take a minute and just take a look at

1 those?

2 A. How thoroughly would you like me to read them?

3 Well, I will just look at them briefly and if
4 I need to go back through them to answer a question ---

5 Q. I am not going to ask you whether you know
6 what word, what specific word on the 12th line of the H
7 document. Actually, what I should say is you just
8 review them for as much time as necessary to answer the
9 question, have you ever seen these documents before?

10 A. I may have seen these documents as part of the
11 preparation for this Newman case.

12 Q. Before that?

13 A. No, before that I had never seen them.

14 Q. So, these weren't any of the documents which
15 were in the Rumberger selection from the F-Car Project
16 Center File?

17 A. That were sent to Kirkland & Ellis?

18 Q. Yes.

19 A. Right. You're right. These documents of A
20 through H were not included in what Rumberger sent to
21 Kirkland & Ellis in July of 1991.

22 Q. And you never reviewed these documents to make
23 a decision as to whether they should be produced or were
24 responsive to plaintiff's discovery demand?

25 A. Correct. I never reviewed these documents.

1 Q. Did you ever hear of anybody discussing these
2 alternative design documents which if you go to the end
3 specifically start talking about the Vista Vent and the
4 modified Vista Vent as being two alternative designs?

5 A. No.

6 Q. Were you aware that General Motors had
7 considered at any point during the development of the
8 T-roof two additional designs known as the Vista Vent or
9 the modified Vista Vent?

10 A. No. Here is a drawing. I remember seeing
11 this drawing in preparation for the hearing up in New
12 Jersey.

13 Q. And you had never heard of that before?

14 A. No. Well, here it is. It has the T-hatch,
15 which maybe that's the same exact thing as what's on the
16 F-Cars as sold. I am not sure, but just looking at
17 this, this Vista Vent, modified T-hatch, no, I've never
18 seen this. Now, I think there are some cars that have
19 something similar to this like a Porsche 911 Targa has
20 some kind of design that's similar to that.

21 Q. I just want to show you something else. I am
22 going to show you what's the addendum H, which is a
23 November 10th, 1978, letter or memo, I don't know which
24 it is, called structural performance of Lancia Spider
25 type roof versus conventional T-roof and at least

1 purports to be some kind of comparison between the
2 T-roof and the roof on the Lancia Spider.

3 A. That's funny. When you were saying -- I
4 thought you were saying Alancia, not Lancia but in any
5 event, it doesn't really matter because I had not heard
6 of this before.

7 Q. And you were aware, not -- strike that.

8 A. Yes, sir, I thought you were saying Alianza,
9 which that's an airline.

10 Q. Al Italia.

11 A. Yeah. Anyway, I had never heard of a Lancia
12 Spider type roof before or even such a thing as a Lancia
13 Spider car.

14 Q. And you were, obviously, not unaware that GM
15 had conducted some kind of testing for the structural
16 integrity of one versus the other?

17 A. I want to see if this talks about testing or
18 not.

19 MR. VINES: The document speaks for itself as
20 to what test was used.

21 A. I was not aware of the November 10th, 1978,
22 document or the contents of it.

23 BY MR. DONOVAN:

24 Q. And anything that's referred in there, which
25 may be a subset of documents from there ---

1 A. Okay. Here is a drawing of a Lancia Spider
2 top roof. Basically -- this is not a T-top at all. You
3 have a rail on each side.

4 Q. That's not the question I asked. I asked were
5 you aware of any other documents which reflected any
6 type of testing done on a Lancia Spider?

7 A. No.

8 Q. Having now looked at those documents, if those
9 documents were among the documents which Rumberger Kirk
10 had sent to you and Mr. Langan gave to you for your
11 review to make a determination as to whether they were
12 responsive to Green discovery demands, would you have
13 considered them to be responsive and put them in a pile
14 of paper to be sent to the plaintiff?

15 A. Yes.

16 Q. Why is that?

17 A. They -- first of all, they related to the roof
18 structure of the F-Car and -- I never looked for years
19 but I am assuming it's '82 to '86, so -- yeah, '82. I
20 have to look for the scope. Assuming that these all
21 apply to the '82 to '86 F-Car, some of them talk about
22 alternative designs. So, certainly, I think you said
23 number 68, which you showed me, dealt with alternative
24 designs. Some of these would have been responsive to
25 68. Others may have been responsive to other ones

1 dealing with the roof. If these documents had been part
2 of what was sent to me or sent to the Kirkland & Ellis
3 by the Rumberger firm and if I had reviewed them, I
4 believe that I would have marked them to be produced.

5 Q. Okay. And whether they got to plaintiff would
6 not have been your ultimate decision. It would have to
7 go through the review process we discussed earlier going
8 to higher attorneys at Kirkland & Ellis and then you and
9 going back to General Motors for an engineering review
10 and go back to General Motors for a legal review?

11 A. Well, I would have run them by Andy Langan and
12 then Andy Langan would have made the decision perhaps
13 with the client, but I don't think -- they would have
14 been produced. I would have showed them to Andy and
15 they would have been part of the package that we sent on
16 to General Motors to have Bates stamped and marked
17 confidential and then General Motors sent the documents
18 to be produced to New Jersey counsel who would produce
19 them to you.

20 Q. Let's ask then the million dollar question.
21 Do you know why they were not produced in the Green
22 versus General Motors litigation in response to
23 interrogatory number six or any other discovery demands
24 which may have been responsive?

25 A. No.

1 Q. You have no idea?

2 A. No. I mean, I'm a lawyer myself. This is
3 based on personal knowledge. I don't have knowledge.

4 Q. You are going to tell me it's human error?

5 A. Pardon me?

6 Q. You are going to tell me human error?

7 A. I'm sorry?

8 Q. You are going to tell me human error?

9 A. Well, it was not done by computer.

10 Q. So, if these documents were part of the
11 package of documents in the F-Car Project Center File
12 which Rumberger was to review, your conversation with
13 Mr. Salas to confirm that they had produced everything
14 relevant to the T-roof and the roof structures as
15 required under either Judge Ferentz's order or the
16 document production or the interrogatories, that would
17 not have proved to be true. Is that correct?

18 A. Apparently. I am making the assumption here
19 that these are all from the, that all these documents,
20 the A through H documents, are from the F-Car Project
21 Center Files. Under that assumption then, yes.

22 Q. Well, then we will say, if they were part of
23 the documents reviewed by Rumberger's office --

24 A. Right.

25 Q. -- when they said they had produced everything

1 to you, that would not be a true statement --

2 A. Right.

3 Q. -- for whatever reason?

4 A. Right.

5 Q. I guess what you are telling me is you don't
6 know whether these documents were part of that F-Car
7 Project Center File because you never reviewed the full
8 F-Car Project Center File. Correct?

9 A. Correct.

10 Q. So, then independently when you received
11 documents which purport to be all the documents related
12 to whatever it was in the F-Car Project Center File, you
13 have no independent way of verifying that one way or the
14 other?

15 A. Well, we relied on the other firm doing the
16 work.

17 Q. Okay. You have no independent way of testing
18 that because you never saw the full lot of documents?

19 A. Correct.

20 Q. So, this is dependent upon your trusting
21 another law firm who in turn has to trust that they have
22 got all the documents from General Motors?

23 A. Right, which is a pretty common thing. Just
24 last week in a case I have, we did that. We worked --
25 often outside counsel for various companies work as a

1 team.

2 MR. DONOVAN: We are close to the end of this
3 tape.

4 THE VIDEOGRAPHER: We are going off the video
5 record.

6 (A recess was taken from 1:38 p.m. to
7 1:45 p.m.)

8 BY MR. DONOVAN:

9 Q. Mr. Coulson, I am going to show you a document
10 which was marked at the privilege hearing as 228, which
11 is a letter to Joe Murray from you and I think it just
12 comports with what we have been talking about is your
13 confirming for Mr. Murray that the document search
14 conducted by Rumberger's office was broad enough to
15 encompass what had to be produced in Green. Is
16 that right? I don't know what the other side is,
17 though.

18 A. Right, here is this language that we were
19 talking about earlier.

20 Q. Okay. In saying that, though, you necessarily
21 had to rely on the fact that General Motors had sent to
22 Rumberger's firm the full compendium of the F-Car
23 Project Center documents. Correct?

24 A. Correct.

25 Q. Okay. And were you aware that there were

1 documents which were related to the design or
2 manufacture of the T-roof F-Car, which weren't contained
3 within the F-Car Project Center File?

4 A. I'm not sure I understand the question. You
5 know, of course there is going to be some design
6 documents that are not in the F-Car -- well, may or may
7 not be in the F-Car Project Center Files but would be
8 maintained at General Motors in a different location.

9 Q. Was your understanding that Fisher Body may
10 have maintained documents related to the development and
11 design of the F-Car, separate and apart from the F-Car
12 Project Center File?

13 A. That was possible.

14 Q. Okay. Do you know whether anybody ever went
15 through all Fisher Body documents to determine whether
16 there were any roof-related documents?

17 A. My memory was that Bob O'Hara was engaged to
18 do a review of Fisher Body microfiche which may or may
19 not contain responsive documents.

20 Q. Were you ever aware of any documents being
21 produced that came out of Mr. O'Hara's search of
22 documents?

23 A. I don't recall any sitting here. I am not
24 sure that if he did pick out documents they necessarily
25 went by me, but I'd have to look at my time sheets or

1 any other records to remember.

2 Q. Okay. Other than possible Fisher Body files,
3 other than the F-Car Project Center File, were you aware
4 of any other repository for F-Car Project Center, F-Car
5 -- strike that. Other than the Fisher Body and the
6 F-Car Project Center File itself, were you aware of any
7 other body of documents maintained anywhere else that
8 related to the F-Car or the T-roof?

9 A. Yeah, I was not that familiar with where
10 General Motors would actually maintain the documents but
11 I'm pretty sure we produced design drawings, compliance
12 testing for Federal Motor Vehicle Safety Standards and
13 probably other documents which were maintained at
14 General Motors apart from Fisher Body or the F-Car
15 Project Center.

16 Q. This August 22nd, 1991 letter, is this with
17 reference to the documents we spoke about earlier, which
18 were the Rumberger documents?

19 MR. VINES: Which letter is that, Maurice?

20 MR. DONOVAN: This is the August 22nd, 1991,
21 228.

22 MR. VINES: Who is it from and to?

23 MR. DONOVAN: It's from David Coulson to Joe
24 Murray.

25 MR. VINES: Joe, okay. Thank you.

1 A. I am assuming that the letter that you are
2 holding in your hand from August contains the Bates
3 stamped versions of the documents which were attached to
4 my July 29th, 1991, letter to Nancy Genova.

5 BY MR. DONOVAN:

6 Q. No. To my knowledge, the microfiche search
7 was broad enough to encompass the judge's specific
8 directions. The microfiche search we're talking about,
9 is that the Rumberger search?

10 A. Yes.

11 Q. Not the O'Hara search?

12 A. Correct. It was only the Rumberger.

13 Q. After your involvement in doing the
14 supplements. I know that I am not going to go over all
15 of them because they really speak for themselves but
16 there was a point in time where you were drafting
17 interrogatories, answers, then answers responsive to
18 Judge Ferentz's order and then it was supplemental
19 interrogatories and you drafted responses back and forth
20 to that. Were you involved in any more document
21 production or document review for the Green case?

22 A. I don't recall. I'd have to look at my
23 billing records to know.

24 Q. Okay. I am going to show you a letter which
25 is Privilege Document 243, Bates ---

1 A. Can we go back to that? The timeframe of
2 doing the supplemental responses was after the judge's
3 order. Right? So, that would have been in the fall of
4 1990 so I would have been -- I am not sure -- let's put
5 it this way. After the production in August of 1991 of
6 these documents which were -- I am not sure if this is a
7 supplemental -- after August 22nd, 1991, I don't recall
8 being involved in any further document reviews or
9 document productions.

10 Q. Just to give you a timeframe, I am going to
11 show you Privilege Document 143, which makes reference
12 to the supplemental interrogatory. That letter is what,
13 in September of 1990?

14 A. Right.

15 Q. And it refers to them being due by November
16 of 1990?

17 A. Right.

18 Q. So, those were the supplement to answers to
19 interrogatories?

20 A. Right. So, after the interrogatories were
21 supplement -- I want to make sure this is clear on the
22 record, after the interrogatories were supplemented in
23 the fall of 1990, I think I was involved to some extent
24 in document review such as I went to General Motors in
25 October of 1990. We talked about that. I may have

1 reviewed some research material or technical literature.
2 We talked about that.

3 Q. In June?

4 A. Yes, things like that. And then, of course,
5 in July of '91 and August '91 we received the batch of
6 documents from the Rumberger firm which we ended up
7 producing.

8 Q. Okay. I am not asking that to confuse you or
9 trick you --

10 A. I just got off on the dates.

11 Q. -- but I want to show you Privilege
12 Document 243, which is a January 23rd, 1992, letter from
13 Nancy Genova to you which makes reference to another set
14 of documents. So, we're finished with the Rumberger
15 documents in '91.

16 A. This could be -- I don't remember this but it
17 could be that we had additional documents that were
18 being produced as a supplement. I just don't remember.

19 Q. Okay. That letter refers to documents being
20 sent to you from Nancy Genova?

21 A. Yes.

22 Q. And Nancy Genova is one of the, what is it, a
23 project discovery?

24 A. Product Discovery Group coordinator.

25 Q. Okay. She is one of the people who pulls

1 documents in response to discovery demand?

2 A. It's part of her job.

3 Q. And she has sent you I don't know how many
4 documents within that Bates numbering. Can you do a
5 quick math?

6 A. It's 100,265 through 100,385, so you are
7 talking about 120 pages.

8 Q. All right. And you have no recollection
9 whatsoever of what those documents were?

10 A. It says here, Dan Stacker reply F production
11 figures and then FMVSS 206 compliance documents 82
12 through 92 F-body vehicles. No, I don't remember this.

13 206 was -- I used to know all the Federal
14 Motor Vehicle Standards. I forgot now.

15 Q. 216 is roof crush.

16 A. Right. 214 is side impact. 206 I thought was
17 related to restraint systems, but I don't remember.

18 Q. I thought it was angle barrier, 206, but I can
19 be ---

20 A. I don't remember anymore.

21 Q. With that said, you have no recollection of
22 what these documents were other than just reading this
23 just now?

24 A. Correct.

25 Q. Do you have any recollection of why they were

1 sent to you?

2 A. No.

3 Q. Do you have any recollection of whether they
4 were responsive to anything being sent to you?

5 A. I'd have to look at my time sheets and any
6 correspondence or memos I had around the timeframe.

7 Q. And do you know why it says that these
8 documents are not being submitted for production to
9 plaintiff even though they seem to refer to ---

10 A. No, I think what she is saying is don't take
11 these and send them to the plaintiff's counsel without
12 them going through the General Motors process of putting
13 on unique Bates stamp numbers and confidentiality
14 markings and so forth. That's how I interpret those. I
15 don't think she is saying don't give these to
16 plaintiff's attorney. She is just saying ---

17 Q. Well, let's read it so we don't have to have
18 an interpretation. It says, "We understand that the
19 documents are not intended for production to plaintiff's
20 counsel. Should any of the documents be required for
21 production at a later date, we request that you return
22 them to this office for Bates numbering."

23 A. Right.

24 Q. So ---

25 A. There's two ways of interpreting this.

1 Q. Well, let me tell you how I interpret it and
2 see if you disagree with it.

3 A. Okay.

4 Q. My interpretation is you are getting a set of
5 documents. She is telling you, don't give these to the
6 plaintiff, at least not yet, and if you have to at some
7 point in time, these are not General Motors stamped and
8 Bates and have the lines through them documents so you
9 got to send them back for the official stamping of them
10 but as it reads right now, we are not producing them now
11 and we don't know if we are producing them at a later
12 date. Is that a fair reading of that?

13 MR. VINES: I object to the form of the
14 question.

15 A. There is a lot in that question. I'd have to
16 know more context. It's possible that Andy Langan
17 wanted to see this information for some reason like, for
18 example, this one says Dan Stacker reply, and I don't
19 remember who -- the name sounds familiar but I don't
20 remember who he was. It says F production figures.
21 Maybe Mr. Langan or one of our expert witnesses wanted
22 to see what were our production figures, how many F-Cars
23 were sold, how many of them were T-roofs. I don't know.
24 I am just speculating. That could be something and then
25 I'd want to know what the 206 compliance documents are

1 as to why, you know, that would want to be, why anyone
2 would want to review those.

3 Q. Okay. Do you have any familiarity with the
4 Johnson versus General Motors case?

5 A. No.

6 Q. Okay. Do you know or -- I am not talking as a
7 result of these hearings but do you know who Mr. Ardis
8 is, Patrick Ardis from Wolf Ardis in Tennessee?

9 A. No.

10 Q. Did you have anything to do with any document
11 production to him in that case with Johnson versus
12 General Motors?

13 A. No.

14 Q. Okay. I am going to show you Privilege
15 Document 354, which is a ---

16 A. I'm assuming that's the Tenn -- my
17 understanding is only from being involved here as a
18 witness in this Federal action that there was a case in
19 Tennessee where documents were produced by General
20 Motors which are those A through H documents and those
21 were given to you and that's -- you filed them with the
22 appellate court. That's my assumption but I only know
23 that from the preparation for this case.

24 Q. Let me show you Privilege Document 354. It's
25 a July 23rd, 1991, memo from the firm of Kirkland &

1 Ellis. It's to a bunch of people at Kirkland & Ellis --
2 did I see your name on it? Yes, your name is on it and
3 it's from Jerri Dassie.

4 Do you know who Jerri Dassie is?

5 A. My understanding is she was a paralegal at
6 Kirkland & Ellis.

7 Q. Okay. And it's announcing that you are now in
8 possession of F-Car documents relative to T-roofs.

9 A. Okay. What is your question?

10 Q. Okay. Do you recall anything about that memo?

11 A. I would have already -- this is a list of
12 attorneys who worked with John Hickey in General Motors'
13 defense and I probably did receive it. I don't
14 independently remember it.

15 Q. Okay. Do you know whether those documents in
16 that form which they are described in that letter were
17 ever produced to plaintiff in Green?

18 A. These are the -- I'm pretty sure these are the
19 documents that we received from Rudock at Rumberger,
20 Kirk, which we produced.

21 Q. The documents which are attached to the 218?
22 Look on the back, please.

23 A. Right, this ---

24 Q. Let me just get the number for the record.
25 Turn that one over.

1 A. 219.

2 Q. 219.

3 A. Which one is 218?

4 Q. 218 is the smaller subset.

5 A. Right. This July 23rd, 1991, memo from Jerri
6 Dassie was referencing the documents which were attached
7 to the July 29th, 1991, letter I sent to Nancy Genova.

8 Q. So you believe those are the same set of
9 documents that now was going to become the documents
10 which were served in T-roof cases were the same set of
11 documents as next to 219?

12 A. I believe that you said something about served
13 in T-roof type cases. I am not sure what you are
14 talking about as far as that goes, but this Jerri Dassie
15 memo is referencing a set of documents which are
16 attached to my July 29th, 1991, letter to Nancy Genova
17 of General Motors.

18 Q. What letter is that, 350?

19 MR. FIXEL: 354.

20 MR. VINES: Which one?

21 MR. DONOVAN: 354.

22 A. You see, it says -- the last sentence of Jerri
23 Dassie's memo states in parenthesis, Andy Langan and
24 Dave Coulson have each received a set for their review
25 in Michael Green versus General Motors. This is

1 probably where it's possible Jerri Dassie sent me this
2 memo at the same time -- she may have sent me this memo
3 with the documents attached whereas everybody else just
4 simply received the memo without documents. That's
5 probably what happened.

6 Q. She doesn't make reference in this to them
7 being Rumberger documents but that's your recollection
8 that these were the Rumberger selected documents from
9 the F-Car Project Center File?

10 A. Yes.

11 Q. And your recollection is that this set of
12 documents referred to in the 354 privilege hearing
13 document is the same set of documents referred, attached
14 to 219 of the privilege documents?

15 A. Yes.

16 Q. Do you have any familiarity with General
17 Motors' document retention policies?

18 A. It's possible I did at one time, but I don't
19 remember.

20 Q. Sitting here now, you have no specific
21 recollection?

22 A. At one time I am sure I did. I don't now.

23 Q. Did you ever factor into their
24 document retention -- did you ever factor into
25 consideration whether all documents had been reviewed,

1 the fact that there is a document retention policy which
2 may have destroyed certain documents?

3 A. Well, that's a very broad question. I am not
4 sure how to answer that. That would depend on the
5 contents.

6 Q. When you produce documents like in the letter
7 here said you believe that the search encompassed all
8 which was asked for by way of discovery, did you ever go
9 and say, well, let me see if there was a document
10 retention letter or a purged letter or a destroyed
11 documents letter which may have interfered with the
12 ability to review all the documents because they no
13 longer existed?

14 A. I am not sure I understand your question. Are
15 you referring to the F-Car Project Center Files?

16 Q. I am talking in any discovery that you did for
17 General Motors during the course of your career.

18 A. Well, the obligation is to produce documents
19 in the company's possession, custody or control.

20 Q. Okay.

21 A. If those documents have been destroyed through
22 the normal process or otherwise, obviously, they are not
23 there to be reviewed or produced. I am not sure I
24 understand your question. I mean, that's -- in every
25 case we you're producing documents there is always a

1 possibility the documents were not retained.

2 Q. Okay. But do you specifically look to see
3 whether documents might have been destroyed which might
4 have contained relevant information?

5 A. There could be particular times when, yeah,
6 you would make that inquiry but I can't talk about it in
7 the abstract.

8 Q. But do you relate that to plaintiff's counsel
9 that we are going to be unable to produce these series
10 of documents because they have been purged, they have
11 been destroyed under our retention policy or General
12 Motors' document retention policy when you find that to
13 be the case?

14 A. It depends on the context. If plaintiffs are
15 asking for particular documents -- suppose there is --
16 here is an example. Suppose a document is produced
17 which references another document, let's say an
18 engineering report dated a certain date, let's say
19 August 1st, 1995. The plaintiff's counsel comes back
20 and says we'd like to see that engineering report from
21 August 1st, 1995. And then we go search for it and that
22 search may determine that those were in files that
23 belonged to Joe Smith who used to work at General Motors
24 but he retired and generally when someone retires their
25 documents are not retained or -- that's just an example.

1 That could happen. And then you tell a plaintiff's
2 lawyers, no, look, these were documents maintained by an
3 engineer who is no longer with General Motors and we
4 believe the documents no longer exist. That could
5 happen.

6 But, in general, when you are just simply
7 producing documents to, document requests for
8 interrogatories, there is no investigation to recreate
9 every document that could have existed in time and then
10 figure out the life history of the document.

11 Q. Or in the normal case any identification that
12 it might be destroyed in a certain series of documents
13 referable to that car year or that car description or
14 that car letter?

15 A. I mean, to do a investigation like that would
16 just be time insensitive and expensive, and I don't
17 think it's required by rules that I'm aware of to do it.
18 It's not something typically done.

19 Q. Wouldn't you just have to look at the purge
20 letter that describes what is to be destroyed, what
21 years and identifies what it is?

22 A. Like I said, for a particular document or
23 something that's very specific you may go through an
24 investigation like that, but in general, no, that's not
25 done in any litigation that I am aware of.

1 Q. Did you ever participate in attendance at a
2 discovery meeting in the Green case?

3 A. No. Well, what you do mean? Where?

4 Q. Yes.

5 A. At General Motors, no.

6 Q. Not internally at Kirkland & Ellis?

7 A. Right. Internally at Kirkland & Ellis
8 obviously I would have been part of telephone
9 conferences that included Joe Murray, perhaps Tom
10 Tansey, Joe Rice, whoever the product discovery
11 coordinator was and whoever the attorney was at General
12 Motors. Not all of them but some of them I would have
13 attended.

14 Q. Did -- I'm sorry, I asked that question a long
15 time ago. You never had another F-Car Project Center
16 case so I guess you never produced those documents that
17 they gave you for those?

18 A. Right, I never dealt with the F-Car again.

19 Q. Did you have any discussion or communication
20 with Joe Rice?

21 A. After Green?

22 Q. In the Green case, I'm sorry?

23 A. Within the Green case, yes, I did have
24 discussions with Joe Rice.

25 Q. What were they with reference to?

1 A. I went out to the vehicle ---

2 Q. Let me ask you a different way. Did those
3 discussions have anything to do with production of
4 discovery?

5 A. Yes. Well, it was -- I went out with Mr. Rice
6 for the vehicle inspection in New Jersey. I recall
7 seeing the accident scene and the car itself, and then I
8 would have been in telephone conferences where Joe Rice
9 was on the conference call where we discussed responding
10 to interrogatories and document request and what
11 documents we may want to search for and so forth. It's
12 possible that I had some one-on-one conversations with
13 Joe Rice during the course of discovery in the Green
14 case. That's what I remember.

15 Q. You were not at all involved in any of the
16 appeal work or writing of the brief on appeal or
17 reviewing the brief on appeal in the Green case, were
18 you?

19 A. Correct, except as involved with the appeal of
20 the decision to deny the motion to recuse.

21 Putting the recusal appeal aside, as to the
22 appeal that occurred after this Green Two trial, I had
23 zero involvement.

24 Q. Were you ever provided with a copy of the
25 brief to read?

1 A. No.

2 MR. DONOVAN: I had a question that went just
3 right out of my head. Maybe that's a good thing.

4 MR. VINES: Brain cramp.

5 MR. DONOVAN: I think I am done.

6 MR. VINES: Do you want to take a minute to
7 think about it?

8 MR. DONOVAN: Well, do you want to ask him
9 questions?

10 MR. VINES: I need to kind of study my notes
11 for a minute or two.

12 MR. DONOVAN: I can ask your questions if you
13 want.

14 MR. VINES: You have heard them enough now.

15 MR. DONOVAN: I can answer them for you, too.

16 MR. VINES: Let's just go off the record
17 briefly and we will be ready to go.

18 THE VIDEOGRAPHER: Going off the video record.

19 (A recess was taken from 2:11 p.m. to
20 2:24 p.m.)

21 THE VIDEOGRAPHER: We are back on the video
22 record.

23 MR. DONOVAN: We took a little break,
24 Mr. Coulson. I reviewed my notes and I have no
25 further questions for you at this time, but I'd

1 like to thank you for your courtesies and the use
2 of your office and everybody has been very
3 hospitable.

4 THE WITNESS: You are welcome.

5 MR. DONOVAN: All yours.

6 MR. VINES: Just a little bit of homework or
7 housekeeping right at the beginning. We'd just
8 like to preserve our objection to the use of this
9 deposition at trial in the basis that Mr. Donovan
10 is in the dual role of attorney and witness in the
11 case. It's perfectly appropriate for him to be
12 participating in pretrial activities under the
13 Court's previous orders but he is not permitted to
14 appear in attorney capacity at trial so we will
15 preserve that objection for later.

16 CROSS-EXAMINATION

17 BY MR. VINES:

18 Q. Mr. Coulson, if you would take another look at
19 this document that you looked at earlier which was
20 Privilege Hearing or Show Cause Hearing Document Number
21 243 and if you would, read the first sentence of the
22 record, please.

23 A. "The Product Discovery Group is providing a
24 set of documents for attorney review bearing Bates
25 numbers 100,265 -- 100,385."

1 Q. Is it fair to say that that's Ms. Genova
2 sending you that letter transmitting those documents for
3 you or the Kirkland & Ellis firm to do that review?

4 A. That's what I would assume.

5 Q. Is that your best knowledge of what that
6 letter is instructing you to do as outside counsel?

7 A. Right. These are sent for an attorney review,
8 meaning General Motors would like an attorney to review
9 these.

10 Q. So, is it your understanding ---

11 A. But I don't think -- Nancy Genova being a
12 Product Discovery Group coordinator does in fact do
13 that. She coordinates. She is not someone who is
14 giving instruction, giving some kind of strategic
15 instruction to me. She is just simply passing the time
16 saying, you know, for attorney review means this is to
17 be reviewed by an attorney before production.

18 Q. Right. So, what I am really driving at is the
19 documents that accompany that letter would it be your
20 understanding that you or Kirkland & Ellis were to
21 review those documents for discovery purposes in the
22 Green case?

23 A. For discovery purposes or purposes related to
24 the case for sure.

25 Q. So, is it possible that she was -- strike

1 that. Walk us through the letter again, if you would,
2 from the standpoint that those were documents being
3 transmitted to you for the purpose of you or Kirkland &
4 Ellis doing a review of them. What do you think that
5 letter tells you to do following your review?

6 A. She is saying that if the decision is made to
7 produce these documents that they be returned to her
8 office for Bates numbering and then there is this
9 confidentiality type of stamp that would typically be
10 put on them if they are confidential.

11 Q. So, is it fair to say that the documents that
12 you received with that transmittal weren't in a format
13 that were suitable for production, even if they were
14 deemed to be responsive?

15 A. That's my assumption. What makes it difficult
16 for me to determine that is these lines that are going
17 crisscross across the paper, I don't know if that's, if
18 those lines were there in the original that was received
19 in January 23rd, 1992, or whether these were
20 subsequently placed on this document because they were
21 produced, for example, in this Newman case. That makes
22 it hard.

23 Q. Okay. Is it fair to say that she is asking
24 you to return to General Motors the documents you deem
25 responsive so that they can put proper notations on the

1 documents before they are produced to opposing counsel?

2 MR. DONOVAN: Object to the form of the
3 question. You are asking Mr. Coulson to interpret
4 somebody else's intent. The document speaks for
5 itself and Mr. Coulson has provided whatever
6 understanding he has of it and now he is just
7 interpreting something that you are interpreting
8 for him.

9 A. I am not trying to be difficult. I am just
10 confused by the document because in the lower left
11 corner it states for attorney review only in Green
12 Second Action versus GM, and I am not sure what that
13 refers to.

14 BY MR. VINES:

15 Q. Okay.

16 A. Like I said, I am not sure these are -- these
17 simply may have been documents that either outside
18 counsel or an expert witness wanted to consider and they
19 may not have been documents that were possibly
20 responsive to a document request. But I am not sure if
21 the plaintiff's request for production figures, for
22 example, or if that would be responsive. I'd have to
23 look at all the requests.

24 Q. Okay. Earlier we were looking or you were
25 looking at documents that were referred to commonly in

1 this litigation as A through H. Do you recall that?

2 A. Yes. I saw them earlier today.

3 Q. Mr. Donovan asked you if you were aware why A
4 through H weren't produced in the Green litigation to
5 the Green plaintiffs. Do you recall that?

6 A. I don't remember his exact question but he was
7 asking about the documents.

8 Q. Do you remember roughly that he asked you why
9 they weren't produced?

10 A. Yeah, I don't remember the exact question but
11 I think my answer is I don't know.

12 Q. Okay. Is it possible that if they weren't
13 produced to the plaintiffs that it was due to human
14 error?

15 MR. DONOVAN: Object to form of the question.

16 A. That's possible. When I say it's possible, I
17 mean, there was nothing intentionally done to not
18 produce documents that someone would have thought was
19 responsive.

20 BY MR. VINES:

21 Q. There were some questions earlier relating to
22 document retention policies. Do you recall those?

23 A. Yes.

24 Q. Are document retention policies common in
25 large corporations?

1 MR. DONOVAN: Objection. You are asking for
2 an expert opinion.

3 BY MR. VINES:

4 Q. In your experience in working as counsel for
5 large corporations?

6 A. In my experience, yes, most corporations have
7 document retention policies.

8 Q. In your experience, what do companies do to
9 reconcile their document retention policies with the
10 need to retain documents for discovery purposes in
11 litigation?

12 MR. DONOVAN: Object to the form of the
13 question. It calls for expert testimony.

14 MR. VINES: I am asking him in the capacity as
15 a practicing attorney whose practice commonly
16 includes litigation defense for large corporations.

17 MR. DONOVAN: We have not established that
18 unless you want to qualify him as an expert.

19 A. If documents are scheduled to be -- typically,
20 if documents are scheduled to be purged or destroyed in
21 the normal course of business but then there is a
22 litigation action that arises where the documents may be
23 responsive or relevant in that litigation, then often
24 times there will be a hold placed on the destruction of
25 the documents.

1 Q. And can you describe what a hold means?

2 A. It means there is, the company puts out
3 instructions to not throw away or destroy documents.

4 Q. So, would it be fair to say that means that
5 the company is instructing it's employees to suspend
6 operation of the document retention policy with respect
7 to the documents that are responsive to that litigation?

8 A. I am not sure if I'd actually say suspend the
9 document retention policy because I think a lot of
10 document retention policies contemplate there could be
11 holds placed on the destruction of documents but I think
12 the gist of your question is would that mean if there is
13 a hold placed would that stop the normal process of
14 destroying documents. The answer to that is yes.

15 Q. Just to be clear what I'm asking, to the
16 extent that a document retention policy operates to
17 cause the destruction of documents under the normal
18 operation of the policy, do holds stop that destruction
19 with respect to documents relative to litigation?

20 A. Yes.

21 Q. Was it your experience in working with General
22 Motors that they followed proper hold procedures
23 relative to lawsuits that they faced?

24 A. In all the cases I had for General Motors, I
25 never ran into an issue of General Motors having not

1 appropriately held documents or stopped the destruction
2 of documents that were scheduled to be destroyed. I
3 have never had an issue or anything like that in any of
4 the cases where I represented General Motors.

5 Q. Let me tell you that the three claims in the
6 case brought by the plaintiff in this -- by this case I
7 mean the Newman litigation -- are grounded in negligence
8 fraud in the New Jersey State R.I.C.O. statute.

9 In your working with General Motors in the
10 Green case, did you ever witness any conduct on the part
11 of General Motors' employees, in-house counsel,
12 etcetera, that struck you as being unreasonable or
13 negative behavior relative to discovery practices in the
14 case?

15 A. No.

16 MR. DONOVAN: Object to the form of the
17 question.

18 A. No.

19 BY MR. VINES:

20 Q. With respect to the same case and the same
21 people and the discovery in those cases, did you ever
22 witness any conduct that struck you personally as being
23 evident of any intentionally fraudulent behavior in
24 their part?

25 MR. DONOVAN: Object to the form of the

1 question.

2 A. No, absolutely not.

3 BY MR. VINES:

4 Q. To the extent that the New Jersey R.I.C.O.
5 statute is predicated on an enterprise formed to commit
6 fraudulent conduct for the benefit of the malfeasance
7 did you see any evidence of that sort of behavior on the
8 part of any General Motors ---

9 MR. DONOVAN: Object to the question. It
10 doesn't define R.I.C.O. accurately and this witness
11 has not been established as an expert in R.I.C.O.,
12 especially New Jersey R.I.C.O.

13 A. No. I have handled many R.I.C.O. cases under
14 Federal R.I.C.O. and under the R.I.C.O. statutes of
15 various states. I don't recall a case under a New
16 Jersey R.I.C.O., but, typically, the state laws are
17 modeled under Federal law.

18 Q. Just in terms of your understanding of those
19 terms, I also should ask you, did you see anything that
20 you would characterize as racketeering conduct on the
21 part of General Motors?

22 MR. DONOVAN: Note my objection.

23 A. Absolutely not.

24 MR. VINES: That's all I've got.

REDIRECT EXAMINATION

BY MR. DONOVAN:

Q. I've just got a couple. You said it was possible that it was human error that the A through H and perhaps other documents were not produced by way of discovery in Green versus General Motors by General Motors because it was human error possible. Correct?

A. Yes.

Q. I would assume it would be just as possible that someone intentionally pulled those documents to deprive the plaintiff of those documents by way of discovery in Green versus General Motors. Isn't that just as possible?

A. No. I got to tell you, I can't conceive of that having happened. I cannot conceive that anyone at General Motors, the Rumberger firm, Kirkland, Tansey's firm intentionally withheld documents or engaged in other intentional conduct related to those documents.

Q. Do you know every person who has ever had access to or handled the documents in question in this case or in the Green case, I'm sorry?

A. No.

Q. Okay. So, you can't vouch for the reputation or you can't rule out -- you can't vouch for the integrity or the ethics of all the people who may have

1 come in contact and handled these documents, can you,
2 because you don't know them all?

3 A. I can vouch for the integrity of Tom Sokowski
4 (phonetic) and John Brown and General Motors, for Nancy
5 Genova and Susan Rhodes at General Motors.

6 Q. That's not my question. My question was, you
7 just said you don't know everyone who handled these
8 documents. I am asking you whether you can vouch for
9 the reputation and integrity of everyone -- that you
10 can't vouch for the reputation and integrity of everyone
11 because you don't know everyone who handled these
12 documents. Is that correct?

13 A. That is correct.

14 Q. Okay. And you are certainly aware, being
15 involved with corporate defense work and just being a
16 normal person who probably reads the paper, that there
17 are corporations who hide documents so as to avoid
18 potential exposure in lawsuits. Correct?

19 A. I have read about it in some cases and you see
20 some articles about it.

21 Q. Enron comes to mind as a case where documents
22 were not produced which should have been produced?

23 A. I'm not familiar. I haven't read any of the
24 books in Enron. I know Enron was a controversial
25 situation but I don't -- in terms of documents, I have

1 no idea.

2 Q. And as you testified earlier, your ability to
3 confirm the full compliance in document production is
4 based upon things other people told you about what they
5 did and your reliance on that?

6 A. Yes.

7 Q. I think you told us you never handled a case
8 under New Jersey R.I.C.O.

9 A. I don't recall one. It's possible but none
10 come to my memory.

11 Q. And you say the law is usually modeled after
12 Federal law but you don't really know that, do you?

13 A. No, it's just an assumption in all the cases
14 where I've handled -- in all the R.I.C.O. cases I've had
15 which have involved state R.I.C.O. statutes, typically
16 they are modeled on the Federal statute.

17 Q. But that is an assumption about New Jersey on
18 your part?

19 A. Yes, just an assumption. I am not even making
20 that assumption really.

21 Q. And if you are familiar with R.I.C.O., you
22 certainly are aware that in different states different
23 courts interpret their R.I.C.O. statute, even if it's
24 modeled after the Federal law, in different ways?

25 A. Yes.

1 Q. And there is a great deal of discussion in the
2 law about what constitutes a conspiracy to commit
3 racketeering, wouldn't you agree with that?

4 A. I haven't researched the conspiracy law in New
5 Jersey so I can't answer the question.

6 Q. And there is a great deal of legal and
7 scholarly writing and difference in terms of what
8 constitutes the entity involved in the racketeering.
9 Would you agree with that?

10 A. You mean the enterprise?

11 Q. I'm sorry, the enterprise. There are
12 different legal scholars who take very different
13 positions on what constitutes an entity -- not an
14 entity, an enterprise.

15 A. Right. There is a lot of case law on what's
16 an enterprise. The case law is evolving still.

17 Q. Have you looked at New Jersey case law on what
18 New Jersey defines an enterprise to be?

19 A. No, but it just reminded me that I am familiar
20 with one case that involved in May -- I can't remember
21 if it involved -- it was in New Jersey in Federal court,
22 but I can't remember if it was only a Federal R.I.C.O.
23 or whether there was a state component with it either,
24 but I wasn't that familiar with it so it really doesn't
25 change my answers.

1 Q. Let's go back to my question. You have not
2 researched New Jersey case law with respect to what
3 constitutes an enterprise for the purpose of
4 establishing a R.I.C.O. claim?

5 A. Correct.

6 Q. Do you know how many predicate acts one has to
7 have in New Jersey in order to qualify as a R.I.C.O.
8 claim?

9 A. I'd have to look at the statute.

10 Q. And that differs from place to place?

11 A. Usually predicate acts is two or more but I'd
12 have to look. I mean, there's the continuity
13 requirement.

14 Q. There is a whole bunch of case law on this?

15 A. Right.

16 Q. Are you familiar with the case law in New
17 Jersey as to what constitutes a fraud under New Jersey
18 law either statutory or case law interpretation? Have
19 you studied that?

20 A. Oh, I may have in the past under New Jersey
21 law. It's possible I have researched that in the past,
22 but based on any notion of fraud that I'm aware of, no
23 fraud occurred here.

24 Q. Okay. Let me ask you the question again
25 because you seem to want to answer your questions not my

1 questions. I am asking you whether you have any
2 knowledge sitting here, because today is when you
3 answered the question that GM was not guilty of fraud,
4 sitting here today do you have any knowledge of what
5 would constitute a fraud in New Jersey under New Jersey
6 statutes and New Jersey case law?

7 A. My assumption is that it requires an
8 intentional misrepresentation of material fact that was
9 reasonably relied upon.

10 Q. I am asking you if you know the law in New
11 Jersey. I am asking you if you know the law in New
12 Jersey. I know the general law. I am asking you if you
13 are familiar with the New Jersey law. Have you looked
14 at it recently?

15 A. Let's put it this way; I haven't looked at the
16 law previously in New Jersey.

17 Q. Do you know the magistrate in this case has
18 found a prima facie case of fraud on behalf of General
19 Motors in this case?

20 MR. VINES: That assumes facts not in evidence
21 in this deposition.

22 A. There was a crime of fraud finding but that's
23 not fraud in the sense of a cause of action.

24 MR. VINES: That doesn't go to the ultimate
25 question of law in the case.

1 BY MR. DONOVAN:

2 Q. I'm not so sure. I'm not so sure.

3 Were you aware that the magistrate has found a
4 prima facie cause in order to strike attorney-client
5 privileges?

6 A. She found that the crime fraud exception
7 applied but that's a much fuzzier concept sort of like
8 fraudulent transfers is another sort of more fuzzy
9 concept than what I am familiar with is the cause of
10 action for fraud. When I said there's no fraud here I'm
11 talking about a cause of action for fraud.

12 Q. She found much more than just a basis to
13 strike attorney-client privilege on the basis of crime
14 of fraud, didn't she?

15 MR. VINES: Object to the form of the
16 question. Assumes facts not in evidence.

17 BY MR. DONOVAN:

18 Q. She found it on a number of bases. Are you
19 aware of that?

20 MR. VINES: Object to the form of the
21 question. Assumes facts not in evidence.

22 A. I read the order. It may have been a redacted
23 version. It was some time ago and I don't remember it
24 specifically.

25 Q. The order or the opinion?

1 A. Isn't an opinion an order? I thought it was
2 an order also. It was the order and opinion or opinion.

3 Q. Did you read Judge Hayden's opinion affirming
4 Judge Shwartz?

5 A. No.

6 Q. Did you read the Third Circuit's opinion
7 confirming Judge Hayden and confirming Judge Shwartz?

8 A. No.

9 Q. Are you familiar with what constitutes
10 spoliation of evidence in New Jersey under various case
11 law?

12 A. No.

13 Q. I don't know what my question was way back
14 then when I couldn't remember. Do you know whatever
15 happened to those documents referred to in, I think it
16 was 352, that document in front of you, which were the
17 documents sent by Nancy Genova?

18 A. You mean in 243?

19 Q. 243.

20 A. No. No. Let's see, which one are you talking
21 about?

22 Q. Is that the one that -- let me see.

23 A. Why don't you just go by the date?

24 Q. Yes, it's a January 23rd, 1992, letter to you
25 from Nancy Genova. It's Privilege Hearing Document 243

1 Bates number 1357. Do you know whatever happened to
2 those documents?

3 A. Sitting here today, I have no independent
4 recollection, but if I looked at my time sheets that
5 would help. There might be other correspondence or
6 memos between Mr. Langan and me for all I know.

7 Q. Do you know whether that document, those
8 documents were ever turned over to the plaintiff or not?

9 A. I don't know. I don't remember, but you
10 should be able to tell if you look in the -- I am sure
11 there is a log of all the documents that were produced.

12 MR. DONOVAN: I have nothing further. Thank
13 you.

14 MR. VINES: I just have a couple.

15 RECROSS-EXAMINATION

16 BY MR. VINES:

17 Q. Respecting the people involved in the
18 discovery process in the Green litigation you had
19 personal familiarity with and within your understanding
20 of the word conspiracy, did you witness any conduct
21 among that group that would strike you as the acts of a
22 conspiracy to commit wrongdoing in discovery in the
23 Green litigation?

24 MR. DONOVAN: Object to the form of the
25 question.

1 A. No, absolutely not. There was no conspiracy.

2 BY MR. VINES:

3 Q. Okay. With respect to that same group in the
4 litigation in Green and the discovery in the Green
5 litigation and in your understanding as an experienced
6 counsel, defense counsel in this area and your
7 understanding of the word spoliation, did you ever
8 witness any conduct by that group that constituted in
9 your mind spoliation of evidence?

10 A. No, not under any laws of spoliation that I am
11 aware of.

12 MR. VINES: Thank you. That's all I have.

13 MR. DONOVAN: I have nothing further.

14 THE VIDEOGRAPHER: Going off the video record.

15 (The deposition was concluded at 3:00 p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, the undersigned authority, certify that
DAVID COULSON personally appeared before me and was duly
sworn.

WITNESS my hand and official seal this
25th day of August, 2008.

Patricia Bedit, FPR
Notary Public - State of Florida
My Commission No. DD538979
My Commission expires 4/17/2010

REPORTER'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, Patricia Bedit, Florida Professional Reporter and Notary Public in and for the State of Florida at large, do hereby certify that DAVID COULSON was by me first duly sworn to testify the whole truth; that I was authorized to and did report said deposition in stenotype; and that the foregoing pages, numbered from 1 to 114, inclusive, are a true and correct transcription of my shorthand notes of said deposition.

I further certify that said deposition was taken at the time and place hereinabove set forth and that the taking of said deposition was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of August, 2008.

Patricia Bedit, FPR

E R R A T A S H E E T

IN RE: STEVEN NEWMAN V. GENERAL MOTORS
DEPOSITION OF: DAVID COULSON TAKEN: August 20, 2008

DO NOT WRITE ON TRANSCRIPT - ENTER CHANGES HERE

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Please forward the original signed errata sheet to this office so that copies may be distributed to all parties.

Under penalty of perjury, I declare that I have read my deposition and that it is true and correct subject to any changes in form or substance entered here.